UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

10-CR-19 (JG)

-against-

United States Courthouse

: Brooklyn, New York

ADIS MEDUNJANAIN,

Defendant.

: April 25, 2012
9: 30 o'clock a.m.

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TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE JOHN GLEESON
UNITED STATES DISTRICT JUDGE , and a jury.

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Proceedings recorded by mechanical stenography, transcript produced by CAT.

(In open court.)

(The following occurs outside the presence of the jury.)

(Judge JOHN GLEESON enters the courtroom at 9:36 a.m.)

THE COURTROOM DEPUTY: All rise.

THE COURT: Good morning, you can be seated in the back, please.

(Defendant enters the courtroom.)

THE COURT: I've received a press request for the video of the doc's testimony. And I know you're busy, but I haven't heard anything from the Government and it's presumptively releasable.

Has anything been released?

MR. BITKOWER: Yes.

THE COURT: Has the audio been released?

MR. BITKOWER: No, the transcript has been released, Your Honor. The audio, I think we would be fine with releasing if we could separate it from the video, which I believe we can.

THE COURT: Right. What justifies me not releasing the Exhibit?

MR. BITKOWER: Your Honor, we're actually preparing a letter at this moment, the reason we haven't given it to you is because of the time difference between U.K., we're waiting for a piece of information from the British. So, I'm expecting that would be electronically filed this morning while we're in session.

The primary justification is simply physical safety, that is, the witness's current physical appearance, what his face looks like now, is very distinct from the publicly available photographs that are in circulation in the British and American, to a lesser extent, media and given that he is not in custody and given the differences in witness protection capacities in the United Kingdom as opposed to the United States, the British police who are tasked with keeping him safe are firmly convinced that releasing a current video of him now effectively onto the Internet forever...

THE COURT: I guess.

MR. BITKOWER: It would be a problem.

THE COURT: I take it what's going to be proposed is to disclose the video but obscure the face. That would be the least restrictive alternative.

MR. BITKOWER: That was going to be an alternative suggestion. One suggestion was just to release the video itself and have the transcript released. We could also do something with the audio, or if Your Honor was inclined, do something with some sort of technological solution equivalent of testifying like disguise or something like that, that is something like a blue dot or something like that.

THE COURT: Yeah. Tell them without prejudging it to get to work on preparing a DVD that just blocks out his face.

MR. BITKOWER: Yes, Your Honor.

THE COURT: All right?

And in the meantime, make available the audio.

MR. BITKOWER: Yes, Your Honor.

THE COURT: To whomever asks for it.

Okay. Let's bring in the jury, where's our witness? Oh, he's right here. Come on up.

(Witness resumes stand.)

THE COURT: Good morning.

THE WITNESS: Good morning, sir.

(Continued on following page.)

(In open court.)

THE COURTROOM DEPUTY: All rise.

(Jury enters at 9:42 a.m.)

THE COURT: Good morning.

THE JURY: Good morning.

THE COURT: Please, be seated.

Welcome back.

Mr. Dinnerstein, are you ready?

MR. DINNERSTEIN: Yes, sir.

CROSS-EXAMINATION (Continued)

BY MR. DINNERSTEIN:

Q Good morning, Agent Azad.

A Good morning, sir.

Q Now, yesterday, we ended talking about September 14th, 2009, do you recall that, sir?

A Yes.

Q We talked about the search warrant that -- was it about 2:30, 3:00 o'clock in the morning; is that correct?

A It was about 2:30, yes.

Q Now, let's recap about what you knew prior to the execution of that search warrant at 2:30 in the morning.

First, you had obtained certain E-mails that Zazi had sent to somebody in Pakistan; is that correct?

A Is this me personally or are we talking as the FBI as a whole? I'm not sure where...

Q Well, were you aware of that?
A I was aware of the E-mails, yes.
Q So, we're talking about what you knew, not what other people knew, okay.
But other people notified you regarding those particular E-mails; is that correct?
A Yes.
Q And that occurred prior to September the 14th of 2009; is that correct?
A Yes.
Q And are you -- now, you also knew that Najibullah Zazi, Zazi had rented an automobile in Denver, Colorado; is that correct?
A Yes, sir.
Q And that you -- you didn't know at that time that he had been at the homestead -- the home -- what is it the hotel in Denver, did you know that?
A The Homestead Suites, right, no.
Q Okay. But you know he did rent a car?
A Yes.
Q And you knew that he traveled in that car on September the 9th from Denver, Colorado to New York City; is that correct? Arriving in New York around, I think, September the 10th?
A Yes, yes.

Q And that he was traveling alone, you know that; right?
A Yes.
Q And you knew that the FBI stopped his vehicle at the George Washington Bridge; is that correct?
A Yes.
Q And you knew that a search of the computer in the trunk of his vehicle was done on that particular date; is that correct?
A That is not correct.
Q Well, his computer was taken and imaged at that time; is that correct?
A No.
Q What was done with his computer on September the 10th?
A Nothing.
Q It was, it was viewed?
A No.
Q What was the purpose of stopping the vehicle at that time?
A To do a preliminary look before he comes in, into Manhattan.
Q And what were they looking for?
A Routine search. Anything explosive, anything of danger. Just a stop and talk.
Q So, and agents did that; is that correct?
A I don't believe it was agents.

Q Somebody did it; right?
A Somebody did that.
Q And was that based upon your instruction as the case agent, sir?
A No.
Q That was somebody above you who made that determination to stop the vehicle at the George Washington Bridge?
A Yes.
Q Do you know who it was?
A I don't.
Q Now, after -- this is what you knew on September the 14th. You knew that the vehicle then traveled across the George Washington Bridge and traveled to Queens; is that correct?
A Not on the 14th. But are we talking my knowledge on the 14th I knew that it happened?
Q Yes, prior to the 14th.
A Yes, yes. I'm sorry.
Q And can I ask you when you knew that?
A Can we back up a little bit?
Q Sure?
THE COURT: One at a time, please.
THE COURT REPORTER: Thank you.
A When you said he crossed the bridge into Queens?
Q Well, he first crossed the bridge into, I guess, the

Bronx and then from the Bronx he went into Queens.
A Right, right, I thought you said Manhattan, sorry.
Q Okay. And then you knew, prior to September the 14th, that he went to, to the location of where Zarein Ahmedzay lived; is that correct?
A Yes.
Q And you knew -- and that's because you had surveillance at that location; is that correct?
A Yes.
Q And you were told at that point that, in fact, happened; is that right?
A Yes.
Q And you then learned about the where -- what -- and you learned that Zarein Ahmedzay got into Zazi's car, that was this rental vehicle from Colorado; is that correct?
A Yes.
Q And you learned at that time, or you learned sometime before September the 14th, that the two of them got into the vehicle and went to a Muslim Center around 5 p.m.; is that correct?
A Yes, sir.
Q And you learned that as they left the vehicle, one of them was carrying something that looked like a, a glass jar; is that correct?
A No.

Q Did you learn whether they were carrying anything as they went into the Muslim Center?
A I don't think I knew that at the time.
Q Not prior to the 14th?
A Correct.
Q And you learned that they went into the Muslim Center and they stayed in the Muslim Center for about an hour; is that correct?
A Yes.
Q And you did not know what they did in the Muslim Center; is that correct?
A Yes, sir.
Q You had no -- you had no way of intercepting their communication with one another within the Muslim Center; is that correct?
A Yes.
Q Now, you then learned that they went out of the vehicle; is that correct?
I mean, excuse me, they went out of the Muslim Center?
A Yes.
Q And they went out into the vehicle; is that correct?
A Yes.
Q And that initially there was a third person who also was in the vehicle; is that correct?

A Yes.
Q And then that third person at some point got dropped off and that Zarein also got dropped off in the general vicinity of his home; is that correct?
A Yes, sir.
Q And then, at that point again, at that point again, Zazi was by himself; is that correct?
A Yes.
Q And later, you learned that he went to the Abu Bakr Mosque; is that correct?
A Yes.
Q And that you knew at that time that this was during Ramadan; is that right?
A Yes.
Q And you knew that there were numerous people at the mosque for the evening prayers; is that correct?
A Yes.
Q And then, you knew that at some point he left, also by himself, and went to Naiz Khan's house; is that correct?
A Yes.
Q And that he got to Naiz Khan's house around 10, 10:30 in the evening.
A I don't remember the time, but yes, that seems correct.
Q And that it was your belief, sir, that he slept at that person's home; is that correct?

A Yes.
Q And at some point in the morning, he woke up; is that correct? I mean I'll rephrase that.
At some point, again, you know that Zazi left Naiz Khan's house; is that correct?
A Yes.
Q And he drove somewhere; is that correct?
A Right, yes.
Q And he drove to -- did he drive or did he take the train?
A Both, I believe.
Q Well, there came a point on that day, which we're now on September 11th, a Friday, that the FBI took control of that rented vehicle; is that correct?
A Yes.
Q And at that point, on September the 11th, that rented vehicle was taken to a location where imaging of the computer was actually done; isn't that correct?
A Yes.
Q And then, the car was put back out onto the street; is that correct?
A I'm not sure but I think so, yeah.
Q But you know that Zazi at some point called the police to report his car being stolen; is that correct? You knew that?
A Yes.
Q Now, you also knew that there was a person by the name of

Ahmad Wais who was shown photographs of Naji, Adis, and Zarein; is that correct?

A Yes.

Q And you knew that that occurred on -- was that September 11th that that happened? Do you know?

A I believe it happened on the 10th.

Q And you know that because Wais's phone was being intercepted; right?

MR. LOONAM: Objection.

THE COURT: Come on up, please.

(Side-bar conference held on the record out of the hearing of the jury.)

(Continued on following page.)

(Side-bar.)

THE COURT: What's the objection?

MR. LOONAM: I don't -- first, I don't know what the good faith basis is for asking if Ahmad Wais's phone was being intercepted at that particular point.

MR. DINNERSTEIN: We have a good faith basis. We know that when Wais spoke to Najibullah, you guys had recorded it.

MR. LOONAM: Yeah, I mean --

MR. DINNERSTEIN: So, how did they know about it except the phone was intercepted?

THE COURT: Could you guys address the Court, please.

MR. DINNERSTEIN: I'm sorry, Your Honor.

MR. LOONAM: Yes, Your Honor.

THE COURT: Didn't you play these recordings in the Mohammed Wali Zazi trial?

MS. BERGER: Yes.

MR. LOONAM: We played the recording in this trial.

THE COURT: Is that your objection to good faith basis?

MR. LOONAM: Well, the good faith basis in this trial would mean Najibullah Zazi speaking with Adis, not intercepted with Afzali.

In addition, you know, whether or not the target of the surveillance was Afzali's phone can be subject to Your Honor's order.

THE COURT: Overruled.

(Side-bar end.)

(Continued on following page.)

(In open court.)

THE COURT: Okay. Go ahead.

Q Is it necessary that Ahmad Wais's phone calls were being intercepted?

A At that time? No.

Q Did you learn about it prior to September the 14th?

A I'm sorry, can you repeat that question?

Q Did you learn about that prior to September 14th, the date of the search warrant?

MR. LOONAM: Your Honor, learn about what?

Q Learn about that his phones were being intercepted?

A I knew that phone call was intercepted, yes.

Q And did you know that a member of the New York Police Department showed Ahmad Wais photographs?

A Yes.

Q And he showed him photographs of Najibullah Adis and Zarein; is that correct?

A Yes.

Q And that, did you know that Wais was a police informant for the New York Police Department?

A Yes.

Q And when did you know that?

A On the 11th.

Q Of September?

A Yes.

Q And did you know on the 11th of September that Najibullah had made a call to somebody?
A Yes.
Q And did they have a conversation regarding the fact that the police had shown him those photographs; is that correct, sir?
A Him being Afzali?
Q Yes. And you knew also, that Wais had contacted Adis Medunjanin; is that correct?
A Yes.
Q And you knew that on September the 11th, Adis and Wais were in contact with one another; is that correct?
A Yes.
Q And that would be after the phone call that Wais had made to Adis; is that correct?
A Yes.
Q And you knew all of those things on September the 14th; is that correct?
A Yes.
Q Now, you didn't know what -- other than the phone conversation, you didn't know what Wais had said to Adis when they spoke in person; is that correct?
A That's correct.
Q Now, now, let's talk about September 17th of 2009, that was the second time you spoke with Mr. Medunjanin; is that

correct?
A Yes, sir.
Q Now, you didn't speak with him on the 15th or the 16th; is that correct?
A Yes.
Q Now, you did learn, of course, about what was going on in Colorado; is that correct?
A Yes.
Q And you did know that even as of this date, there was some media attention to what this was all about; isn't that correct?
A Yes.
Q And that there was, in fact, media attention from when Zazi was stopped at the George Washington Bridge; isn't that correct?
A I don't know about that particular point, but I'm sure it happened.
Q Certainly, there was media attention on September 10th or 11th; is that correct?
A Yes.
Q Now, on September 17th, you went over to Adis' home; is that correct?
A Did you say the 17th?
Q Yeah, the 17th.
A Yes, yes.

Q And what time of day did you get there?
A Afternoon. 2:00 o'clock maybe. 2:00 p.m.
Q Did you call him beforehand to tell him that you were going to come?
A No.
Q Did you -- at that time that you had gone over to the house on September 17th around 2:00 p.m., had you already viewed Zazi's videotape of September the 16th?
A I don't believe so.
Q When did you first view the videotape of Zazi that he had made on September the 16th?
A Sometime later. It took a while to come over.
Q And you said that from 2:00 o'clock you interviewed him for -- can we approximate the time as somewhere between eight to ten hours?
A Sure.
Q I mean; is that correct?
A The best I remember, yes.
Q So, in other words, it was from about 2:00 o'clock in the afternoon until between 10:00 p.m. and midnight?
A No, I would, I would, I guess I would move my 2:00 p.m. estimate up a little bit earlier. I don't think we were there until midnight.
Q Okay. So, between let's say 9 and 11? What would you say in terms of when he was finished with the interview?

A Do you mind if I check real quick?
Q Please. Please check, sir.
A I may be able to.
Q And what were you looking at? Just tell the Ladies and Gentlemen of the Jury what you're looking at.
A It was my prior 302s that we talked about yesterday and my interview.
Q So, this would be FA-4?
A I'm not sure yet which one I'm looking at.
Q Okay.
A I'll let you know, sir.
(Pause in the proceedings.)
A Yes, I'm looking as 3500 FA-4.
Q Does it tell you what time you picked him up?
A It does not, but I do have what I believe is a start time about 1:40, and I have a bad copy, so I can't make out exactly, but -- so it looks like the interview was about from 1:40 to 22:15. So, about 10:15.
Q So, that would be kind of splitting the difference between 8 and 10. So, would be about nine hours?
A Yes.
Q All right. Now, Mr. Medunjanin wasn't under arrest at that time; is that correct?
A That's correct.
Q And he didn't have a lawyer present at that time; is that

correct?
A Correct.
Q And you said before that this was a voluntary interview; is that correct?
A Yes.
Q And you said, as a matter of FBI policy, these types of interviews are not tape recorded; is that correct?
A As a matter of FBI policy, all interviews are not tape recorded.
Q Well, all but Zazi's interview was tape recorded; right?
A Well, but we said that that policy was not followed there.
Q And you don't know why that policy wasn't followed there; is that correct?
A I don't.
Q And you would agree with me if it was tape recorded there would be a record of what was actually said between the two of you; correct?
A Yes, a recording would provide a record.
Q Now, you said, sir, and you were looking at it as you were taking some notes; is that correct?
A Yes.
Q And these are notes of what we'll say was this nine-hour interview; is that correct?
A Yes.

Q How many pages of notes did you take?
A If I can check.
Q Sure.
(Pause in the proceedings.)
A I have eight pages of notes.
Q Okay. And of the last two pages of notes, one has just a bunch of names; is that correct?
A Yes.
Q And that is not in your handwriting, but in Mr. Medunjanin's handwriting?
A Yes, that's Mr. Medunjanin's handwriting.
Q And that's one of the two pages -- that's one of the pages that you talked about as to notes; is that correct?
A As part of my notes, yes.
Q But these notes were not written by you; is that correct?
A That page is not written by me.
Q And then the next page is a, is a kind of a drawing; is that correct? The last page of the notes?
A Yes. That's a diagram and writing.
Q And the writing is by you?
A Yes.
Q What?
A Yes.
Q So, your notes in this -- and the writing is two lines; is that correct?

A Yes.
Q And the notes that you're talking about is six pages that were written by you; is that correct?
A Yes.
Q Now, the 302 that you filled out, you transcribed that on September the 18th; is that correct?
(No Response.)
Q FA-3, just take a look.
A Yes, that is, it was written on September the 18th, yes.
Q Now, when you say "written," does that mean you wrote it on September the 18th?
A Yes.
Q When -- if these were transcribed, it means that you typed it up?
A Yes.
Q You personally typed it up; right?
A Yes.
Q Now, that typewritten -- those typewritten notes consist of eight single spaced pages; is that correct?
A Yes.
Q And it would be fair to say that the 302 report has much material that are not in your notes; is that correct, sir?
A Yes.
Q That's because it's actually quite lengthier than your notes; is that right?

A There are more details in the 302 than there are in my notes.

Q So, there are things that you remember that were not put in your notes that you put into your 302; is that correct, sir?

A Yes.

Q And the only thing you had to refresh your recollection about this nine-hour interview were those six pages of notes; is that correct, sir?

A And the other interviewer in the room.

Q And that would be Maysonet?

A Yes.

Q And he and you kind of talked about what happened?

A We reviewed the interview, yes.

Q And what do you mean by you "reviewed the interview"?

Did he take notes, too?

A No.

Q You're the only one who took notes?

A Yes.

Q So, when you say you "reviewed the interview," you meant you reviewed it orally, the two of you; is that correct?

(No Response.)

Q You talked about it?

A Right. We went over what happened in the interview, yes.

Q Now, did he tell you that there's presently no call for

violent Jihad? Is that one of the things he said during that interview?
A Mr. Medunjanin?
Q Yeah.
A He said that there's presently no caliphate present, so there is no presence for the violent Jihad.
Q And you wrote that in your report; right?
A Yes.
Q And he also says that collateral deaths of the innocent are not permissible; is that correct, sir?
He told you that; right?
A Yes.
Q And you wrote that down; right?
A Yes.
Q Now, you asked him about whether Adis was aware of Zazi's bomb plots to bomb the New York City subways; isn't that correct?
A I believe we asked him if he was aware of any pending attack on the United States or New York.
Q And he said -- what did he say?
A He said no.
Q And you also asked him if he knew when Zazi had left Pakistan; is that correct, sir?
A Returned to the United States, yes.
Q And did he know that?

A Yes, he did.
Q He knew that it was the day that the airplane landed in the Hudson River; is that correct?
A Yes.
Q Did you know whether or not he had communication -- and that was in January of 2010; is that correct?
A Yes.
Q Did you know whether or not Zazi and Adis had communication around the time that Zazi landed in the United States?
A No, I don't.
Q Did you look at the phone record to see whether there was any communication between the two of them around that time?
A Are we talking about the 17th?
Q No, we're talking about January of 2010, when Zazi returned to the United States.
A I'm sorry, he landed in January of 2009.
Q Oh, you're right, I'm sorry. January of 2009?
A Right.
Q Got these years wrong.
January of 2009, he landed -- Zazi returned to the United States; right?
A Yes.
Q Did you notice from looking at the phone records whether or not there was any communication between Zazi and

Adis Medunjanin in January of 2009 that shows up on those telephone records?

MR. LOONAM: Your Honor, can we just clarify as to what time period you're asking the agent he looked at the records?

Q Did you look at the records for January of 2009?

A I'm still not clear.

When did I -- during the time of the interview in 2000 and... 2009.

Q At any time, sir?

A Yes, I've seen the toll records.

Q All right. Are there toll records that indicate that Zazi and Adis spoke to one another in January of 2009?

A I don't know about all of January of 2009. I would have to look at the records again.

Q Well, do you have the records?

A I don't.

Q Where are they?

MR. DINNERSTEIN: Where are they? The phone records?

MR. LOONAM: Oh.

(Pause in the proceedings.)

MR. DINNERSTEIN: Oh, Government's Exhibit 173 in evidence; right?

MR. LOONAM: In evidence.

MR. DINNERSTEIN: All right.

This is page 6 of those records.

(The above-referred to Exhibit was published to the jury.)

Q Now, do you see any communication between Adis Medunjanin and Zazi in January of 2009?

A Well, this is a summary of the toll records; correct, sir? Of the overall toll records.

Q These are the toll records that we have regarding communication between those people, these people.

(The above-referred to Exhibit was published to the jury.)

THE WITNESS: Right.

A Well, the issue with this is that we may not have known, I don't think we know at this point, all of the phone numbers that were used by Mr. Zazi. So, they may not just be on this chart. But if we're just going to go by this chart, then there is no communication in January.

Q So, are you aware that Zazi had other phones?

A No.

Q So, you have no reason to doubt that this was the phone that he had; right?

A I have no reason to doubt that this phone number was there. But he had just moved to Colorado, so I'm not sure what phone he would be using.

Q Now, what you know is that Adis on September the 17th, when you had this conversation with Adis Medunjanin, he denied being involved in any sort of bomb plot; isn't that correct?
A Yes.
Q And you asked him that a number of times; is that correct?
A Yes.
Q Okay. And he repeatedly said to you that he was not involved in any sort of bomb plot in the United States; is that correct, sir?
A Yes.
Q Now, he also told you that on September the 11th, he had a conversation with Najibullah Zazi; isn't that correct?
A Yes.
Q And he told you -- and you knew, of course, that he did have that conversation because the phone was tapped; is that correct?
A Yes.
Q And you knew the nature of the conversation; is that correct?
A Yes.
Q And that's the conversation that was played for the jury; is that correct?
A Yes.
Q And that was about Zazi saying something about he's going

to call the police about his car being stolen?
A Yes, and I believe the defendant wanted to go meet with Zazi to help him.
Q And Zazi said, "You don't have to"; correct?
A Yes.
Q That was the extent of the conversation; right?
A Yes, it was.
Q Now, and he didn't deny having that conversation with Zazi, did he?
A No.
Q Now, you also said that at that time, on September 17, you asked him if he would consent to a DNA sample; is that correct?
A Yes.
Q And he did; right?
A Yes.
Q And he also, you asked him whether or not he would consent to candid boot prints; is that correct?
A Yes.
Q And he did; right?
A Yes.
Q And you also asked him whether or not he would consent to a voice samples; is that correct?
A Yes.
Q And he did, right?

A Yes.
Q And you asked him if they -- if you could take his photograph; isn't that correct?
A Yes.
Q And he said yes, right?
A Yes.
Q And he was willing to do anything you asked him, right?
A He agreed to those things.
Q Well, did you ask him to do anything else?
A I believe -- did you mention the fingerprints? His fingerprints he agreed to that.
Q Oh, you took his fingerprints too; right, and he consented to the fingerprints?
A Yes.
Q He was being cooperative?
A Yes.
Q And you believed you had a good rapport with him through this nine-hour conversation; is that correct?
A Yes.
Q Now, you would call it a conversation or an interview, you would certainly not call it an interrogation; is that correct?
A Yes.
Q Even though during this conversation, you indicated to him that "We believe you were involved in a bomb plot to bomb

to New York City subways"; right?
A We did not say, that no.
Q So, you didn't confront him with what you believed; right?
A We asked him if he was involved in any sort of plot or anything, threat that we should know about to New York. Multiple times.
Q Now, sir, as the case agent, you knew that certain things happened after September the 17th; is that correct? Of 2009.
A Yes.
Q For instance, you knew that from that time or around that time, surveillance was at Adis Medunjanin's home 24 hours a day, seven days a week; is that correct?
A They were outside the residence in the vicinity, yes.
Q 24 hours a day, seven days a week; right?
A Yes, for the most part, yeah.
Q And there was somebody who -- you heard this testimony, there was somebody who was the eye and he would actually be watching the residence and there would be a number of other people, other agents and police officers, who also were in the general vicinity; is that correct?
A Yes.
Q And they, that happened -- that happened all the time, 24 hours a day, seven days a week; right?
A Yes.

Q And if he went to his job, somebody would follow him to his job; is that correct?
A Yes.
Q If he went to his lawyer's office, somebody would follow him to lawyer's office; is that correct?
A Yes.
Q If he went to --
THE COURT: We understand.
Q -- his mosque?
THE COURT: We get it. We get it. He was followed.
Q Wherever he was going he was being followed; right?
A Yes.
Q Okay. Also, his phone was being tapped; is that correct?
A Yes.
Q And when did his phone start being tapped?
MR. LOONAM: Objection.
THE COURT: Sustained. Come up.
(Side-bar conference held on the record out of the hearing of the jury.)

(Continued on following page.)

(Side-bar.)

THE COURT: Do I understand there to be an important distinction between the fact that they were able to hear recorded calls and whose phone was tapped?

MR. LOONAM: And also -- yes. And when it began, correct.

THE COURT: All right. So, just forget about whose phone is tapped and focus on -- I think this is all you need -- the fact that conversations he had were recorded.

MR. DINNERSTEIN: Okay.

MR. LOONAM: Yes, Your Honor.

MR. BITKOWER: And the initiation date is also subject to a protective order already by this Court.

MR. DINNERSTEIN: Just, can I ask if it was generally in September?

MR. BITKOWER: You already have, but yes.

THE COURT: You ask what you want. If there's an objection, I'll rule on it.

MR. DINNERSTEIN: I'm sure you will.

(Side-bar end.)

(Continued on following page.)

(In open court.)

Q Did you know, sir, that Adis's phone calls were being recorded?

A Yes.

Q And were they recorded from approximately September to January of 2010?

MR. LOONAM: Objection.

THE COURT: Sustained.

Q Do you know about when the phone calls were being recorded?

MR. LOONAM: Objection.

THE COURT: You can answer; yes or no.

THE WITNESS: Yes.

Q Was it for a lengthy period of time?

A Yes.

Q Now, sir, in September 25th, you had learned that Adis Medunjanin had retained an attorney; is that correct?

A I'm not sure that's the exact date but around that time, yes.

Q It was in September of 2009; is that correct?

A Yes.

Q Now, in fact, you spoke to the attorney; is that correct?

A Yes.

Q Now, from your perspective, was getting a lawyer, an attorney, a good thing or a bad thing for your investigation?

MR. LOONAM: Objection.
THE COURT: Sustained.
Q Would having an attorney prevent you from conducting interviews with Mr. Medunjanin when you felt like?
MR. LOONAM: Objection.
THE WITNESS: No.
MR. LOONAM: Calls for a legal conclusion.
THE COURT: He already answered it.
Q Is it your testimony, sir, that it doesn't matter whether somebody has a lawyer, whether you conduct an interview with an individual?
A Yes.
Q Now, you know, sir, that there were lawyers present with Zazi in Denver, Colorado when he spoke with the FBI agents; is that correct?
A Yes.
Q Did you ask the lawyer if he wished to have a conversation with you, with Mr. Medunjanin?
A No.
Q Did you stop going over to the house to attempt to speak to Mr. Medunjanin between September 25th or around the end of September 2009 and January 7th, 2010?
A Yes.
Q You stopped going over to Mr. Medunjanin's home?
A I did not go to the home any time in that period, yes.

Q Why?
A I'm sorry, what?
Q Why?
A Oh, we knew he had retained an attorney. There's other investigative reasons. We just didn't think it would be fruitful.
Q So, was one of the reasons that you didn't go to the home was because he had retained an attorney?
A Yes.
Q Now, shortly after he had retained an attorney, did you go to his father's place of employment?
A I don't remember the timing, but we did go there outside the employment. We didn't go to the employment.
Q Did you fill out a 302 regarding that?
A Yes.

(Pause in the proceedings.)

MR. DINNERSTEIN: I'm going to just ask you to take a look at this.

Just for the witness, Your Honor.

THE COURT: Yes.

MR. DINNERSTEIN: As to refresh your recollection as to the date you went over to the father.

MR. LOONAM: Can you identify it?

MR. DINNERSTEIN: Yes, it's FA-38.

(The above-referred to Exhibit was published to the witness.)

THE WITNESS: This is my 302, yes.

Q And does it indicate when you spoke with, I guess it's on the bottom?

A Yeah, can you -- yes.

Q Is that it?

A Yes.

Q And when did you speak with Mr. Medunjanin's father?

A September 28th, of 2009.

Q And what was the reason that you went to speak to the father?

A I believe it was to return the, Mr. Medunjanin's, the father's cell phone.

Q Why would you need to go to his job to do that?

A We didn't go to his job. We met him after work. Why not?

Q Outside of his job; right?

A Yes.

Q Did you think that FBI agents showing up at somebody's place of employment is nerve wracking?

A Again, we didn't show up to the place of employment. For one of those reasons, for that.

Q Did you call his job to see what time he got off work?

A No.

Q How did you know that he was going to be at his job at

that particular time?
A I don't recall. I don't -- I assumed he was working normal hours, business hours.
Q This was after he had -- they had retained an attorney; is that correct?
A Again, I don't remember the exact date of the attorney.
Q Well, wasn't the reason, sir, that you went to Mr. Medunjanin's father's place of employment was to try to convince him to get rid of the lawyer?
A No.
Q Did you talk about the lawyer?
A I did not.
Q Did you talk about firing the lawyer?
MR. LOONAM: Objection, Your Honor.
THE COURT: Well, if the greater includes the lesser, we know the answer. But let's hear it any way.
Overruled.
THE WITNESS: I'm sorry, what was the question, could you repeat that, please?
Q Did you talk about firing the lawyer?
A No.
Q Did you talk about how lawyers are expensive?
A I don't recall any conversation about the lawyer.
Q Did you talk about how a lawyer might be unnecessary?
A I don't recall any conversation about the lawyer.

Q Did you tell him that all they wanted Adis to do was to tell the truth?
A Yes.
Q And you told that -- and that Mr. Medunjanin told you he is telling you the truth.
A I think. Sir, there was a large language barrier with Mr. Medunjanin.
Q His English was limited; is that correct?
A Yes.
Q Now, did you encourage Mr. Medunjanin to speak to his son?
A Yes.
Q And did you encourage Mr. Medunjanin to speak to his son to speak to you without the lawyer being present?
A No.
Q You said that you went there to return a cell phone; is that correct, sir?
A I think that was the reason, yes.
Q Was that the reason or was that a ploy?
A We had his cell phone, we were going to return it and then attempt to engage in any conversation we could.
Q The purpose was to engage him in conversation; isn't that correct, sir?
A Yes.
Q It wasn't to return the cell phone, right?

A No, we had the cell phone, we were going to return it.
Q You could have mailed the cell phone; right?
A We're not in the business of mailing things that we seize back to their owners.
Q You could have given it to the lawyer, if he had a lawyer at that time?
A Again, I don't regularly communicate with attorneys.
Q Well, in this case you did communicate with the attorney; isn't that correct?
A The attorney called me.
Q And you returned the call?
A Possibly. I may have out of courtesy. Directed him to the U.S. Attorney's Office.
Q What?
A And directed him to the U.S. Attorney's Office and a contact over there.
Q Now, did you offer to drive the father home?
A Yes.
Q And what did he say?
MR. LOONAM: Objection.
THE COURT: Overruled.
A I don't remember the exact words, but he refused the ride.
Q And he said he'd just as soon take the subway home?
A I don't recall if it was the subway, but yes.

Q Now, did you also get someone to speak to the mother?
A Did we get someone to speak to the mother?
Q Mm-hmm.
A Yes, I think we returned items to her as well.
Q Well, and you also returned those items at her place of employment; is that correct?
A Yes. I'm not sure if the items were returned there, but yes.
Q And what was the reason that you went to her place of employment and not just bring them to the house?
A I don't recall the reason. I'm not sure.
Q Was it because you wanted to have a reason to speak to her?
A Yes.
Q In that case you didn't go because you understood that her English was really very limited; is that correct?
A No, that's not the reason.
Q Well, you actually had a Bosnian FBI agent who was able to speak to her in her native tongue; is that correct?
A Yes. I...I don't recall if it was that time, but at some point we did, yes. And it was a female to make it more comfortable.
Q By the way, was that Bosnian FBI agent someone from New York?
A No.

Q Where was she from?
A I don't recall, possibly Detroit. Yeah, another office. We have limited Bosnian linguists.
Q So, you had to have somebody come from out of the city to approach this, the mother of Adis Medunjanin; is that correct?
A Not for that reason, no.
Q Well, why did this person come from Detroit, or someplace?
MR. LOONAM: Objection.
THE COURT: Overruled.
Q Why did this person come from some other place to have a conversation with Adis's mother in her native language?
A It was not for that reason. I believe the Bosnian linguist was already in New York because we have limited Bosnian linguists in New York so as to help with the overall investigation.
Q Right. But the point of this conversation between the mother, who you had to speak to at her job, and this Bosnian FBI agent, was to give her some property back; is that correct?
A I believe there was property to be returned.
Could you repeat the whole question again?
Q Sure. Let me rephrase the question.
A Yeah, thank you.
Q Wasn't the return of the property simply a ploy to get

the mother to convince her son to speak to you?
What was the purpose of going to this mother's job?
A No, the purpose was to basically to engage her in conversation.
Q Conversation about what?
A We wanted to know what everybody knew, potentially about her son's travel to Pakistan, the ploy to get married, all of that.
Q Did you know at that time that the family had retained a lawyer?
MR. LOONAM: Objection.
(Juror making noise.)
THE COURT: Are you all right? Do you want some water?
(Handing.) (Pause.)
THE COURT: The objection is overruled.
A Again, I don't recall the timing of the lawyer versus interviews.
Q Do you recall what day it was that you had this Bosnian FBI agent meet the mother?
A I don't.
Q Do you have any notes that might refresh your recollection as to that?
A I don't.
Q Now, you know, sir, that Zazi was arrested sometime in

September of 2009; is that correct?
A Yes.
Q And that he was brought to the Eastern District of New York; is that right?
A At some point he was, yeah. I don't recall the date of the transfer.
Q Okay.
A Or the transport.
Q But you recall it was sometime in September; is that correct?
A I'm not sure of that.
Q Now, Zazi had a lawyer; is that correct?
A Yes.
Q Now, and you were present during conversations that Zazi had with members of the U.S. Attorney's Office; is that correct?
A No.
Q Were you present at any conversations where Zazi -- where there was a discussion about Zazi cooperating with the Government?
A No.
Q Was there any -- did you know whether there was any talk within the office about Zazi cooperating with the U.S. authorities?
A Yes.

Q And did you know --
A I'm sorry, can we clarify that?
Q Sure.
A Are we talking about the potential of him cooperating? Or...
Q Sure, the potential of him cooperating?
A Yeah, I knew the potential existed.
Q And that would have been prior to Adis Medunjanin's arrest in January of 2010; is that correct?
A Yes.
Q And did you know what sort of strategies were going to be used by the U.S. Attorney to convince Zazi that he should cooperate?
MR. LOONAM: Objection.
THE COURT: Overruled.
A No.
Q Did you know whether or not one of the strategies could be adding additional charges?
A No.
Q Did you have any idea whether Zazi could have been charged with crimes that would have been a mandatory life sentence?
A I believe he was. I don't know.
Q I'm not talking about a minimum -- a maximum of life. I'm talking about a mandatory life sentence.

A Oh, no. I didn't know that.
Q Do you know whether or not Mr. Medunjanin is charged with crimes that could cause a mandatory life sentence?
MR. LOONAM: Objection.
THE COURT: Sustained.
Q Now, let's talk about January 7th of 2010.
A few days before that date you received, you got a search warrant; is that correct?
A Yes.
Q And that would have been, I think it's FA-6. That would have been -- is that...
MR. LOONAM: I'm sorry, is what introduced into evidence?
MR. DINNERSTEIN: The search warrant.
MR. LOONAM: No.
MR. DINNERSTEIN: This is just for the witness, Your Honor.
THE COURT: All right.
(The above-referred to Exhibit was published to the witness.)
A And you said 6, sir?
Q FA-6. Do you see it?
A No, I don't. I don't have that part on my screen.
MR. DINNERSTEIN: Oh, okay.
(The above-referred to Exhibit was published to the

witness.)

THE WITNESS: Okay, thank you.

Q Is that the search warrant application that you filled out, that you signed on December 29th of 2009?

(No Response.)

Q It's the last page, sir?

A 29th of December, 2009, yes.

Q And this is a search warrant application; correct?

A Yes.

MR. DINNERSTEIN: I'm going to ask, Your Honor, that FA-6 for identification be introduced into evidence.

THE COURT: Any objection?

MR. LOONAM: Objection, Your Honor, I don't see the relevance of the application.

THE COURT: Overruled.

Received.

(Government's Exhibit FA-6 was received in evidence.)

(The above-referred to Exhibit was published to the jury.)

Q Now, sir, this ten-page document was filled out so you could recover passports of Adis Medunjanin; is that correct?

A Yes, sir.

Q And as you said before, sir, you didn't feel that you should just communicate with the lawyer; is that correct?

A Yes, there are reasons for that, yes.
Q And what's the reasons for that?
A Primarily, we are, one of the reasons we are asking for the passport was to conduct examinations. The laboratory form. We didn't want extra people handling them. We didn't want anything happening before we got that in possession.
Q The lab report of the passport, is that, is that, is that what -- when you say the lab report, you mean the lab report of the passport?
A I don't think I said lab report.
Q What did you say, I'm sorry?
A I think I said examinations of the lab.
Q Examinations of the lab of the passport?
A Examinations at the lab of the passport, yes.
Q And what were you examining it for?

THE COURT: Come on up to side-bar.

(Side-bar conference held on the record out of the hearing of the jury.)

(Continued on following page.)

(Side-bar.)

THE COURT: I just want to atune you, alert you to this: Don't suggest there's some impropriety in not going through Counsel to get the passport. You're getting close to that.

MR. DINNERSTEIN: Okay.

THE COURT: That's not right.

MR. DINNERSTEIN: I'm going leave that alone now.

THE COURT: Because I'll fix it in front of the jury if you create that.

MR. LOONAM: Your Honor, we're going to request an instruction on this basis.

THE COURT: Well, when you request it, I'll rule on it.

MR. LOONAM: Yes, sir.

MR. DINNERSTEIN: Okay.

(Side-bar end.)

(Continued on following page.)

(In open court.)
Q Sir, what examinations did you expect that the lab would do on the passports?
A Fingerprints analysis and question document analysis were the two primary examinations that we were looking for.
Q I'm sorry, fingerprint to see whether or not Adis' Medunjanin touched his passport; is that right?
And other people?
A We were looking for fingerprints, latent prints that would be on the passport, yes.
Q And what was the other reason?
A Question documents.
Q What does that mean, sir?
A They, they're to determine the validity or whether or not a document may be false or altered.
Q You mean whether or not this was a fraudulent passport? Is that what you mean, sir?
A That's not why we sent it there.
Q Well, what do you mean, then by questioning?
A They were looking at the visa extension.
Q Is there anything wrong with the visa extension?
MR. DINNERSTEIN: Can I have that Exhibit, please? The passport.
MR. LOONAM: Mitch.
(Handing.)

MR. DINNERSTEIN: And the other papers.

(Handing.)

MR. DINNERSTEIN: Thank you.

Now, this is a color photograph of the visa extension.

(The above-referred to Exhibit was published to the jury.)

A Yes, sir.

Q And this is, is there any concern at this point that this visa extension was not provided by the Pakistani authorities?

A Not at this time, no.

Q Okay. This is a valid visa extension; is that correct?

A As far as we know. I believe the, that the unit down there didn't have a comparison to compare it to. So, I believe it's inconclusive.

Q And the visa extension is for December 16th of 2008; is that correct, sir?

A It is valid up to December 16th of 2008, yes.

MR. DINNERSTEIN: Okay. I'm going to ask you to take a look at...

(Pause in the proceedings.)

MR. DINNERSTEIN: Okay. This is, Your Honor, not in evidence yet.

THE COURT: Okay. There you go.

(The above-referred to Exhibit was published to the witness.)

Q Now, sir, the passport was introduced into evidence, I believe, as Government's Exhibit 125.

Can you take a look at what has been marked for identification as evidence Exhibit 125-B?

THE COURT: Sorry, 125-B?

MR. DINNERSTEIN: Yes, 125-B as in boy.

THE WITNESS: Yes.

Q Can you identify that?

A Yes. I believe that's one of the pages from the passport that contains the photograph and the information for the defendant.

Q And is that the same as a portion of Exhibit 125, which is the passport itself?

THE COURT: And is this in evidence, 125?

MR. DINNERSTEIN: 125 is in evidence.

THE COURT: So, that's in evidence, what the jury sees now?

(The above-referred to Exhibit was published to the jury.)

MR. DINNERSTEIN: Yes.

THE WITNESS: Yes, I believe that's a photograph of that page.

MR. DINNERSTEIN: So, Your Honor, at this time I would ask that 125-B be received.

THE COURT: Any objection?

MR. LOONAM: No objection.

THE COURT: Received.

(Government's Exhibit 125-B was received in evidence.)

Q And is that a photograph that was taken of Mr. Medunjanin in 2003, January of 2003; is that correct? Is that what the passport says?

A Yes.

Q And that he apparently received that passport then, his date of birth was April 21st of 1984; is that correct?

A Yes.

Q So, when the photograph was taken, he was nearly 19 years old; is that correct?

A Assuming that the photograph was taken at that time, yes.

Q Approximately?

A Sure.

Q And that it indicates that his place of birth is Bosnian and Herzegovina.

A Yes.

Q Is that correct --

A Yes.

Q -- as his place of birth?

Now, you said when you went over to the house on

January 7th that Alisa, the daughter -- the sister gave you the passports; is that correct?

A Yes, sir.

Q And that's after you had a conversation both with Alisa and with Adis; is that correct?

A Yes.

Q Now, what time was it, sir, that you went to the apartment?

A I believe it was about 1:30 p.m.

Q Now, sir, when you fill out these reports, these 302 reports, these FBI -- excuse me, these FBI reports, you, of course, sir, want them to be accurate; is that correct?

A Yes.

Q It's important for them to you accurate; right?

A Sure.

Q It's important when you interview Mr. Medunjanin that you actually write down what he actually said; isn't that correct?

A Yes. In the 302, yes, we try to be as accurate as possible.

Q Now, of course, in any 302 you try to be accurate, right?

A Yes.

Q Now, you said, sir, that you went to the house around 2:35 p.m.?

A I said 1:35.

Q Oh, you said 1:35?

A Yes.
Q Did you write that down in your report?
A That's not what the report says, no.
Q And this is a report that you filled out; is that correct?

MR. DINNERSTEIN: I'll just show it to the witness.

THE COURT: Yes.

(The above-referred to Exhibit was published to the witness.)

A Yes.
Q Now, you, of course, discussed this report with the U.S. Attorney before you testified; is that correct?
A Yes.
Q Now, sir, it indicates on the report where you make reference to this that the search warrant was executed at 2:35 p.m.; is that correct?
A Yes.
Q So, the report is simply wrong; is that correct, sir?
A Yes. The time on the report is off by one hour.
Q You made a mistake?
A Yes. The minutes are correct, the hour is wrong. I had not taken any notes or written anything down when we were there for the search warrant, this 302 was completed a few days, I think on the 11th was the date, after the car crash and everything else. So, I simply got the hour wrong.

Q You simply got the hour wrong, is that your testimony, sir?
A Yes.
Q Even though on the 302s you try to be as accurate as possible; is that correct?
MR. LOONAM: Objection.
THE COURT: Sustained. Don't argue with him.
Q How did you learn, sir, that you had made a mistake?
A At some point after reviewing it, and comparing it with events of the day, we realized the time was off by an hour.
Q Did you look at any recordings to determine whether or not you had made a mistake?
A You said recordings? Reports?
Q Recordings.
A I believe so, yes.
Q And did you look at any telephone records or E-mails to determine that you had made a mistake?
A Yes.
Q So, in other words, sir, on this page to determine what time it was that something happened, you looked at other items other than just your notes; right?
A Well, there were no notes.
Q So, other than your memory, you looked at other things; is that correct, sir?
A Yes.

Q And when you reviewed those other things, you came to the conclusion that you had made a mistake; is that correct, sir?
A Yes.
Q Now, did you have another purpose other than getting the passports as to going to Adis's home on January the 7th of 2009 -- excuse me, 2010?
A No. We went there with the search warrant for the passports.
Q Well, did you try to engage Mr. Medunjanin in a conversation?
A Yes. We were knocking on the door, yes. We wanted to let him know we needed to come in and we spoke about some things.
Q Now, you didn't tell him beforehand you were going to come; is that correct, sir?
A Yes, that's generally what we do with search warrants. We don't let people know we're coming for things.
Q Now, were you trying to engage him in the conversation to get the case moving?
A No.
Q Were you -- you had arrested Zazi in September of 2009; is that correct?
A Yes.
Q And in October, November, and December, into January, you were -- you had 24-hour seven-day a week surveillance on

Mr. Medunjanin; is that correct?
A Yes.
Q And you also, at some point, long before January 7th, you were tapping his telephone; is that correct?
MR. LOONAM: Objection.
THE COURT: Overruled. Sustained.
Reform that last question.
MR. DINNERSTEIN: Okay.
Q You were listening in on his conversations; is that correct, sir?
A Yes.
Q Now, you said on direct examination that you handed a copy of the search warrant to Mr. Medunjanin; is that correct?
A Yes. Again, policy is leave a copy of the search warrant.
Q Did you hand the policy -- excuse me.
Did you hand the search warrant to Mr. Medunjanin or to any member of the family on September the 14th, 2009, when you searched the house at 2:30 in the morning?
A Again, I was not there as part of the search team itself. I believe a copy was left with the receipts, yes.
Q You handed it -- it was handed to someone?
A Again, this was not done by me, so no, I did not hand it to someone. But it's my understanding that a copy was left behind.

Q And how is it your understanding that a copy was handed to somebody?
A I've spoken to the, the people involved and the person who was involved with the search warrants.
Q Would that have been the person who were members of the SWAT team, did they have the search warrant in hand?
A I don't think so.
Q So, it was somebody else?
A Yes.
Q Now, when you handed him a copy of the search warrant, he asked you some questions; right?
MR. LOONAM: Are we going back to the search warrant --
THE COURT: Don't do that, do you have an objection?
MR. LOONAM: Objection, Your Honor, which search warrant?
THE COURT: Overruled.
A Could you please clarify were we talking about Mr. Medunjanin on the 14th?
Q No, we're back to January 7th.
A January 7th, okay.
Q Right. You said on January 7th you handed Mr. Medunjanin a search warrant because that's standard operating procedure; is that correct, sir?
A Yes.

Q And when you handed him the search warrant, there's numbers on the first page of the search warrant; is that correct?
A Yes.
Q And those numbers deal with violations of the criminal code; is that correct?
A Yes, sir.
Q And they deal with violations of a conspiracy to use weapons of mass destruction against persons and property within the United States; right?
A I, I'm actually not sure. If we could get a copy.
MR. DINNERSTEIN: This is in evidence so we can show it to the witness.
MR. LOONAM: Objection.
THE COURT: Overruled.
THE WITNESS: We don't leave the affidavit or the application.
THE COURT: Sorry, just wait one second.
MR. DINNERSTEIN: Could FA-6 be shown to the witness?
THE COURT: Yes, and it's your job to show it to him.
MR. DINNERSTEIN: Okay. It's on the screen.
THE COURT: Oh, it's on the screen, I'm sorry.
MR. DINNERSTEIN: Yes.

THE COURT: I thought you were asking me for it.

MR. DINNERSTEIN: No.

THE COURT: Forgive me, Mr. Dinnerstein.

MR. DINNERSTEIN: You have to push the button, sir.

THE COURT: I thought you were talking about the search warrant.

MR. DINNERSTEIN: Affidavit. FA-6.

THE COURT: This is the affidavit, got it.

(The above-referred to Exhibit was published to the jury.)

MR. DINNERSTEIN: Thank you.

Q Did you hand this to Mr. Medunjanin?

A No.

Q You handed him a search warrant; is that correct?

A Yes.

(Pause in the proceedings.)

THE COURT: Do you have a copy of the warrant? I haven't seen it yet. It's not an Exhibit.

You're talking about the warrant itself?

MR. DINNERSTEIN: Yes, Your Honor.

THE COURT: Anybody have a copy of it?

MR. LOONAM: The warrant was produced to defense, Your Honor.

THE COURT: Is it on the docket sheet? See if you can pull it up, Julia, please.

(Pause in the proceedings.)

MR. DINNERSTEIN: I'm sorry, Your Honor.

THE COURT: It's all right.

MR. BITKOWER: Your Honor, we have somebody who can bring it over from the office.

THE COURT: Do you happen to have it here, Mr. Dinnerstein?

MR. DINNERSTEIN: I'm checking.

(Pause in the proceedings.)

THE COURT: Do you know if it was filed?

MR. BITKOWER: It wouldn't be on this docket, Your Honor.

THE COURT: It might be on the miscellaneous docket?

MR. BITKOWER: Yes, Your Honor, Magistrate Judge.

MR. DINNERSTEIN: I've got it, Judge.

THE COURT: Oh, you've got it. Great.

(The above-referred to Exhibit was published to the jury.)

(Continued on following page.)

CROSS-EXAMINATION CONTINUED
BY MR. DINNERSTEIN.
Q Is this the search warrant that you handed to Mr. Medunjanin on January 7, 2010?
A Yes.
MR. DINNERSTEIN: Your Honor, at this time I would ask that the exhibit be introduced.
THE COURT: Any objection?
MR. LOONAM: Yes, just to the sticker on the -- -how it's labeled.
THE COURT: Mr. Dinnerstein seems to understand what you are talking about, so that is good enough for me.
MR. DINNERSTEIN: I think this is Exhibit G Your Honor.
THE COURT: Defense Exhibit G?
MR. DINNERSTEIN: Yes.
THE COURT: With that sticker is the objection withdrawn?
MR. DINNERSTEIN: Yes.
THE COURT: Received.
(Defense Exhibit G received and marked in evidence)
Q Is that the piece of paper that you handed Mr. Medunjanin on January 7th of 2010?
A That is a copy of the search warrant we handed him, yes.

Q And it has in the body it has particular US Code violation; is that correct?
A Yes.
Q And you handed him this search warrant prior to getting the passport; is that correct?
A I don't recall the timing. I think so.
Q Now, when you handed him the search warrant did he ask you any questions?
A Yes, he did.
Q What were the questions that he asked you?
A He asked me what those numbers mean.
Q And the numbers you are referring to is section 2332 A, little a, then there's an A in brackets 2 an 2239 B; is that correct, those numbers?
A Yes.
Q And what did you say when he asked you what do those numbers mean?
A I told him he could contact his attorney to ask him.
Q And now this conversation was occurring at about, you said, 1:35, 1:40 in the afternoon; is that correct, sir?
A Yes.
Q And did he ask you any other questions regarding the lawyer?
A Yes, he asked if we had contacted the attorney prior to coming over.

Q And have you?
A No.
Q And did you tell him that?
A Yes. I told him it wasn't our job to contact his attorney. He could do that if he wished.
Q After you provided him with a search warrant -- at some point you provided him with a search warrant, right?
A Yes.
Q And at some point the daughter -- the sister, excuse me, brought you the passport; is that correct?
A Yes.
Q And there were actually two passports, one was a Bosnian passport and one was an American passport; is that correct?
A Yes. I believe she brought all the passports over first the whole for the whole family, for the United States one and I returned the rest of the family members and only took one for the defendant, and then the same process for the Bosnian.
Q Did you take Bosnian passport or did you just give her back the Bosnian passport?
A I gave back the other family members' Bosnian passports an held on to the defendant's.
Q And did you notice had the Bosnian passport been expired?
A I don't know.
Q Did you look at the Bosnian passport?
A Just to identify that it was the defendant's, not the

other family members.
Q And did you notice whether there was a photograph in the Bosnian passport?
A I must have, yes.
Q Was it is when he was a child?
A It was a younger photo, yes.
Q And what did you do with the Bosnian passport?
A What did I do with it?
Q Yes.
A Same things as the other -- with the other passport. Same procedure.
Q Did you give the Bosnian passport back to the sister?
A Not defendant's.
Q So you kept it, right?
A Yes.
Q And you still have it somewhere in your FBI headquarters?
A No.
Q Do you know where it is now?
A It is in New York. I am not sure if it is at our office or the U.S. Attorney's Office or here. I am not sure.
Q Was it returned?
A No.
Q Was there a reason it wasn't returned?
MR. LOONAM: Objection.
THE COURT: Overruled.

A Lawfully seized we have no reason to return it yet. It belongs to the defendant.
Q Does it have any significance in this particular case, his Bosnian passport?
A I don't know if I can answer that. It could.
Q Had it expired?
A I don't know.
Q Now, was something else said to Adis other than this conversation about his -- about whether you had spoken to his lawyer and what these numbers mean in the search warrant, anything else said?
A Yes. I believe we talked about an X Box game that he had been playing. As I spoke about yesterday, we talked about the -- taking our shoes off before we entered.
Q Anything else?
A Yes. We used his Kunya name. Is that what we're getting at?
Q Yes, that is what we are getting at. What was the reason for using his Kunya name?
A The reason was to let him know that we were aware of his activities while he was in Pakistan -- the training he received. His al-Qaeda connections.
Q So would it be fair to say that was the reason you came to the house was to use his Kunya?
A Oh, yes. I'm sorry. Could you repeat the question? I

thought you were checking the spelling. Was the real reason to use his Kuyna --
Q I will ask it again.
A Please.
Q Was the real reason you came to the house on January 7, 2010 was to talk about the fact that you knew that Agent Maysonet knew his Kuyna?
A No that is not fair.
Q Do you know why it was discussed about his Kuyna while you were at the house?
A I don't.
Q Did you consider that to be a form of interrogation?
A No.
Q Did you want to see, sir, what his reaction would be when you used his Kuyna?
A Again, I personally was not the person who said it. I didn't know it was coming.
Q So you are saying, you and Agent Maysonet, he was the one who said it, right?
A Detective Maysonet.
Q I'm sorry. Detective Maysonet. Detective Maysonet said it without your knowledge that he was going to say it; is that your testimony, sir?
A Yes, sir.
Q So it was a surprise to you that he brought it up?

A Yes.
Q Now, after he brought it up, you left the house; is that correct?
A Shortly after, yes.
Q And you saw what you say was his reaction to the fact that Maysonet brought up this idea of the Kuyna, correct?
A Yes.
Q And you saw that he had an affect on him; is that correct?
A Yes.
Q You thought, sir, that he seemed troubled by the idea that you knew his Kuyna; is that correct?
A Yes. Not troubled but definitely had an affect on it -- on him.
Q What sort of affect did you think it had on him?
A He wasn't expecting it. It was a surprise. I will say surprised.
Q Did you think, sir, at that time after Maysonet, without your knowledge, used the Kuyna, that was a good investigatory tactic?
MR. LOONAM: Objection.
THE COURT: Overruled.
A Can you repeat the first part? If I thought it was a good investigative what?
Q I will repeat it.

A Please. Thank you.

Q Did you thank you that might be helpful to the investigation to get it moving forward, right?

A We are talking about at that time, or now?

Q Well, we will do both, but at that time what did you think?

A At the time I just took it in stride, you know, things are fluid, they are changing and they go so we --

Q How about now, was it a good thing in terms of the investigation for the topic of Kuyna to be brought up in front of Mr. Medunjanin know?

A I wouldn't necessarily characterize it as a good thing.

Q It got the investigation moving; isn't that correct, sir?

MR. LOONAM: Objection.

THE COURT: Overruled.

A It caused an event to happen in the investigation, sure. We weren't expecting that.

Q When you got back to the office you learned, sir, that you received -- you had received a telephone call from a lawyer; is that correct.

A Yes, I believe there was voicemail on my desk. I am not sure if I got the voicemail when I first returned and learned -- between that time and learned of the car crash or not.

Q And how long did it take you to get to your office from 29-49 137th Street?

A I think it was about an hour, hour and a half.
Q So we are talking now about 3:5, 3:30, is that right, that you are back at the office?
A Yes.
Q Did Maysonet come to your office too?
A No.
Q Did you have a conversation with the lawyer?
MR. LOONAM: Objection.
THE COURT: Overruled.
You can answer yes or no.
A No. I don't recall having one.
Q You recall testifying at a hearing back in March of 2011?
A Yes, I do.
MR. DINNERSTEIN: May I approach the prosecutor?
THE COURT: Yes.
(Mr. Dinnerstein and government counsel confer)
Q Do you recall, sir, being asked this series of questions, this is page 87 of the suppression hearing -- of the hearing. Sorry.
Do you recall being asked this series of questions and giving this series of answers:
Question. All right. What was -- these are questions asked by Mr. Loonam (reading).
Question: What was the content of the voicemail?
Answer: The lawyer asked about the search warrant,

why we were there again and asked for a return call.

Question: And what was discussed when you spoke with the attorney?

Answer: Same topics. He asked why we were there, if we were there again. I explained, yes, we were there with a search warrant. We seized the defendant's passport and that any other questions about what was going on to be directed towards the U.S. Attorney's Office.

Do you remember being asked that series of questions and giving that series of answers at the suppression hearing?

A I don't recall those specific questions and answers but that record certainly indicates that.

Q As you sit here now, do you recall having a conversation with the lawyer after you got back to your office?

MR. LOONAM: Objection to relevance.

THE COURT: Overruled.

A Lawyer, Mr. Loonam or --

Q The defense lawyer.

A Defense lawyer. I don't. That certainly does seem to refresh my memory, yes.

Q So you may have had a conversation with the defense lawyer?

A Yes. I may have had a conversation where I directed him to the U.S. Attorney's Office.

Q That was the last time you had contact with attorney regarding these particular events; is that correct, on January 7th and 8th?

A Yes.

Q Now, sir, shortly after the conversation, if there was one, with the attorney, you said that you had a conversation with the surveillance team; is that correct?

A Yes, well -- team, yes.

Q Do you remember who you spoke to?

A I believe it was a Detective Brandon (ph).

Q And had you learned that Adis Medunjanin had been placed under arrest?

A That is not what he told me but in effect, he had told me that he'd gotten into a car crash, they caught up to him, they had him handcuffed at the expressway.

Q Did you ask what he was being arrested for?

A No, I didn't.

Q Did you hear anything at that time from that agent as to what criminal activity Mr. Medunjanin was involved in that caused him to be arrested for being in a car crash?

A No.

Q Where did you go then?

A Left the office. Started heading towards the Whitestone Expressway.

Q And where were you going?

A To the scene of the car crash.

Q Did you get to the scene of the car crash?
A No.
Q Then where did you go?
A To the hospital.
Q And why was that?
A The defendant had been moved from the scene of the car crash to the hospital.
Q What was your plan at that time?
A To see if we could interview him.
Q Did you speak with any of your supervisors to determine whether he was able to be interviewed?
A Yes, there were some people around, yes.
Q When you say, "some people," were there members of the U.S. Attorney's Office?
A No, they weren't around, no.
Q Did you speak to any of your supervisors?
A Yes.
Q And who did you speak to?
A I believe the squad supervisor at the time was there and the assistant special agent in charge of the counterterrorism division was there.
Q What were their names?
A The SSA, the supervisory special agent at the time the acting was Craig McLaughlin, and the ASAIC was Richard Frankel.

Q What is ASAIC?
A Assistant special agent in charge.
Q You knew when you went first to the scene of the accident and then to the hospital that he had a lawyer; is that correct?
A Yes, but again, we didn't actually get to the scene of the accident.
Q But when you got to the hospital you were aware of the fact that he had a lawyer; is that correct?
A Yes.
Q And the other agent discussed with you the fact that he had a lawyer; isn't that correct?
A Yes.
Q And he discussed with you whether it would be proper to speak with him without the lawyer being present; is that correct?
A Yes.
Q And there was a determination made that it would be okay to speak with him if he would fire his lawyer; isn't that correct, sir?
A No.
Q Well, would it have been appropriate to speak to Mr. Medunjanin when he had a lawyer without the lawyer being present?
A Yes, it's up to him. The defendant chooses not to have a

lawyer present, that is entirely up to them.
Q Now, when you got to the hospital you saw Mr. Medunjanin; is that correct?
A Yes.
Q And was Mr. Medunjanin handcuffed at that time?
A When we arrived, yes.
Q Did you learn at that time what he was arrested for?
A No.
Q Did you ever learn why he was handcuffed at the hospital on January 7, 2010?
A I think what you are asking is why he was handcuffed. I know at the hospital he just -- it is practice to -- once they are handcuffed, they are handcuffed in the ambulance, somebody goes with them, they are handcuffed at the hospital until law enforcement takes the handcuffs off.
Q The question I have, sir, is what was he arrested for when he was at the hospital?
A I don't know.
Q Did you ask anybody what he was arrested for?
A No.
Q Did you think as the case agent it would be important know why he had been placed in custody?
MR. LOONAM: Objection.
THE COURT: Sustained.
Let's take our morning break. Don't discuss the

case. We will resume in ten minutes. All rise.

(Whereupon, the jury exited)

THE COURT: Please be seated. I think the time has come for me to tell the jury what is on the table and what is not. When it comes to line of questioning that is, why it is permitted and what issues are not before the jury and my understanding is a follows. I don't intend to tell the jury all of this but to just to share with you my approach to it, so if I'm wrong or you think I'm wrong, you can tell me.

There were a number of statements made by the defendant which is very damaging to his case which were testified to at great length by this witness, and in my view both voluntariness of the statements, the credibility of the witness are obviously fair game. I'm going to let the defendant through his lawyers try those issues. Given the scope of the statements and their affect on this case, I think it only fair to give him a full and fair opportunity to do that.

On the other hand, neither the lawfulness of the questioning, nor the lawfulness of the arrest, are properly in issue, and I think I ought to tell the jury that, and tell them that to the extent that they find this testimony useful, it can only be useful on the subjects of voluntariness of the statements and the credibility of the agent who is on the stand.

Does anybody disagree with that?

MR. GOTTLIEB: No, Your Honor.

MR. DINNERSTEIN: No, Your Honor.

MR. LOONAM: No.

THE COURT: That is what I will do at the end of the break.

MR. DINNERSTEIN: Do that now?

THE COURT: At the end of the break.

MR. DINNERSTEIN: Oh, at the end of the break.

THE COURT: Okay.

(Court recessed); (Court resumed).

(Jury not present).

THE COURT: Is there's an interpreter problem?

MS. CARVLIN: It has become a full time job trying to arrange -- we had arranged for the interpreter to be here this afternoon. However, yesterday it appeared what we might have to do the defense case before this Mr. Heinrich contacted the interpreter's office here and they kindly at 10 o'clock last night found somebody for this morning. We thought they found someone for the entire day as requested.

THE COURT: Excuse me. Be quiet in the back.

Come up closer, please.

MS. CARVLIN: Yes, Judge.

Apparently the interpreter who was available this morning is not available this afternoon. I believe the interpreter who we had originally contacted about doing this today is available this afternoon. So, hopefully, this will be a happy coincidence where when we actually get there the interpreter who wasn't available this morning will now be available but we are still trying to tie that up.

THE COURT: All right. How much longer do we have of this witness?

MR. DINNERSTEIN: About 20 minutes.

THE COURT: And then what?

MR. BITKOWER: Then we have Agent Panetta, Kholmann and Ted Rose.

MS. CARVIN: I don't think we will have any problem in terms of needing someone between 12:30 and 2 o'clock. We just need to be sure one is available at 2:00.

THE COURT: All right. Bring in the jury.

Thank you.

MR. BITKOWER: Very courtesy copies of a letter we filed electronically regarding the DVD.

THE COURT: All right . Thank you.

(The following took place in the presence of the jury)

THE COURT: Please be seated, everyone.

Before Mr. Dinnerstein resumes, a word about some of this questioning that you've been listening to this morning, to some extent yesterday afternoon as well, and the word relates to why you're hearing it, what issues there are for you to focus on at the end of the day, end of the trial, and what issues are not in the case. Okay. You've heard a lot of questioning regarding trips to the house, and the questioning by this witness of the defendant and related questioning as well, and I'm allowing it for specific reasons that I'll tell you right now, which are to the extent that you find the testimony useful in determining the voluntariness of any statements that this witness attributes to the defendant. Obviously, on correct examination you heard lengthy testimony about statements that this agent has testified were made by the defendant, you can consider those statements, but the voluntariness I'm told is among the issues in the case, and fair game for you to consider. So to the extent that you find the testimony you are hearing now bears usefully on the voluntariness of the statements, you can consider the testimony for that purpose.

Similarly, look any witness, this agent's credibility is an issue. All witnesses' credibility is placed in issue the minute they are start answering questions. So Special Agent Azad's credibility is fair game for the defense and again, to the extent that you find any of this testimony useful in gauging believability or credibility of this witness, Special Agent Azad, you can consider it for that purpose.

Certain issues not before you now and won't be before you ever, but because they're kind of blended in with the questioning, I don't want you to be confused. All right.

The lawfulness of the arrest of the defendant on the Whitestone Expressway is not an issue for you. Nor is the lawfulness or permissibility ability of the agents taking statements from the defendant before you. Those issues have been decided. They are not issues before you now.

Okay. So I'm allowing questioning about it and questioning about what he was arrested for and the like, but be clear on the purposes for which you are hearing this testimony and they are, to summarize, the extent to which the testimony sheds light on the voluntariness of the statements attributed to the defendant by this witness and the witness' own credibility generally.

Okay. Do you understand? Raise your hand if you don't.

Any objection to the instruction by either side.

MR. DINNERSTEIN: No, Your Honor.

MR. LOONAM: No objection.

THE COURT: Go ahead, Mr. Dinnerstein.

MR. DINNERSTEIN: Thank you, Judge.

CROSS EXAMINATION CONTINUED .

BY MR. DINNERSTEIN:

Q Now, sir, I think when we stopped you were getting to

the hospital on January 7, 2010.
A Okay.
Q Now, did you have a conversation -- you said at some point you gave him a Miranda warning; is that correct?
A Yes.
Q Did you have a conversation with Mr. Medunjanin prior to giving him the Miranda warning?
A Yes.
Q And tell the ladies and gentlemen of the jury what you said and what he said.
A Before the Miranda warnings the conversation with the defendant when I approached was we said hello to each other, greetings. I introduce him to the other detectives that were with me at the time.
Q Just a second. Who were the other detectives at the time?
A Detective Murphy and Detective Carny.
Q Where was Detective Maysonet?
A He was not there at the time.
Q Had Detectives Carny and Murphy done any work on this case prior to that day on January 7, 2010?
A I believe so, yes.
Q Were they people that you dealt with on a regular basis?
A Yes.
Q Now, so the three of you were at the hospital; is that

correct?
A Yes.
Q And what hospital was this again?
A New York Hospital, Queens. I think it used be to be called something different.
Q And where exactly was Mr. Medunjanin when you got to the hospital?
A In a hospital bed in the emergency room.
Q Was anybody else in the room?
A Yes, it was an emergency room.
Q What?
A Yes, it was an emergency room. There were other people there.
Q And did there come a time that he was moved to another room?
A Yes.
Q When was that?
A Short time after we got there. I don't know the exact time.
Q And what caused him to be moved into another room?
A The hospital staff approached us and said we would be moving to a different room.
Q Detective Carny speak to someone in the hospital to your knowledge?
A To my knowledge, I don't know. He may have.

Q Did you know whether Detective Carny knew the head of security at that particular hospital?
A Not at that particular time. I do know that now.
Q Did you know whether Detective Carny indicated that he would speak to someone to the get Mr. Medunjanin moved out of the emergency room area that he was in?
A I did not know that.
Q Now, when Mr. Medunjanin was moved, was there any other patients in the room that he was moved to?
A No.
Q So at that point -- and he was still handcuffed at that time?
A No.
Q When were the handcuffs removed?
A When we first arrived and introduced ourselves.
Q You, of course, had other conversations with Mr. Medunjanin; is that correct?
A You mean --
Q Prior to January 7th?
A Yes.
Q Did you call him by his first name or by his last name?
A When we approached at the hospital or in general?
Q When you approached at the hospital?
A First name. Adis.
Q And did he address you?

A Yes.
Q And how did he dress you?
A By first name as well.
Q And what did you say to him when you got into this room where it was just like the four of you, right?
Adis, it was you, and it was Detectives Carny and Murphy, what did you say to him, if anything.
A This is when we -- I believe this is when we started on the actual Advice of Rights Form itself.
Q Well, sir, didn't you ask him whether or not he wished to speak to you without a lawyer being present?
A Yes.
Q And how did you do that?
A We said we would like to speak to him to see if what happened, we know he has an attorney but it is up to him whether or not he wants to speak to us. He responded with can I fire my attorney.
Q What did you say?
A I said that's your decision to make. We can't tell you what to do with that.
Q And Agent Maysonet was not there at that time, correct?
A I don't think so. He arrived a short time later. I am not sure if he was there for that part or not.
Q Did anybody bring up the subject of children and parents?
A Not that I'm a -- possibly, yeah.

Q When you say possibly, yeah, is there anything that would refresh your recollection as to whether or not there was a discussion about children and parents?
A Maybe.
Q Do you recall if Mr. Medunjanin complained of any pain?
A Yes, at some point he complained of discomfort in his shoulder.
Q And when was that?
Was that the at the beginning or further on?
A I don't know. It was not at the beginning. It was maybe somewhere in the middle while we were at the hospital.
Q And now, sir do you have any recollection about conversation about the defendant's family?
A Not at the hospital, no.
Q Do you recall, sir, being asked this series of questions and giving this series of answers page 93?
These are questions by Mr. Loonam (reading):
Question: Was there any discussion about the defendant's family prior to the time that he waived his Miranda rights?
Answer: By you, sir, yes.
Question: Could you tell us about that?
Answer: Yes. Detective Murphy explained that he was a father and that he had kids. He would certainly want to know what was going on if his kids were being investigated by the

FBI and he would love them no matter what, but he would want to know the truth.

Question by Mr. Loonam: All right. How did the defendant appear to respond to Detective Murphy's discussion of, you know, his role as a father?

Answer: He responded affirmatively.

He was not nodding and saying yeah. He understood what Detective Murphy was saying.

Do you recall, sir, being asked that series of questions and giving that series of answers?

A And this is from March of last year?

Q Yes, at the hearing.

A I don't recall but that certainly again seems to indicate --

Q As you sit there now do you remember if there was any discussion about the defendant's family?

A Yes, that does refresh and sound familiar.

Q And do you remember Detective Murphy bringing up the subject of family?

A Yes, in that context he did. I do remember him saying that he was a father as well.

Q And that was prior to the issuance of the Miranda Warnings; is that correct?

A I can't speak to the specific timing of those two things.

Q Now, sir, you said that before issuing the Miranda

Warnings you said to Mr. Medunjanin we would like to talk to you or words to that effect; is that correct?
A Yes, sir.
Q And you say that his response to that was I'd like to fire my lawyer; is that correct?
A Generally I think it was can I fire my lawyer but the same.
Q So he's asking you for legal advice again, right?
A I don't know if I would consider that legal advice but sure.
Q And when he said can I fire the lawyer, what was your response to that?
A I said that is entirely up to him. I can't tell him what to do with that.
Q Did you tell him that lawyers are expensive?
A I think we agreed with him when he said he's costing me too much money or he's costing my family too much money.
Q And you said yes, lawyers are expensive or something like that?
A Yes.
Q Now, that conversation, prior to the issuance of the Miranda Warnings, goes to the hope to build trust with this individual; is that correct?
A No. That conversation was to see if we could actually introduce and work through the Advice of Rights Form.

Q Well, sir, you knew that there was a concern about the fact that there was a lawyer who had actually called that particular day; isn't that correct?
A Yes.
Q And you knew at that time, did you not, that the lawyer was actually looking for his client?
MR. LOONAM: Objection.
THE COURT: Overruled.
A I did not know he was looking for him.
Q Did you know whether or not the family was looking for their family members?
A I did not.
Q Did you know, sir, whether or not the media was present at the hospital?
A I learned that when we were leaving the hospital.
Q And when were you leaving the hospital?
A I believe we put it at about two hours later.
Q So let me understand, sir -- and what time was this conversation started, sir?
A I believe if we can put the date of Advice of Rights Form back up it was 5:50 p.m. Give me a minute (perusing).
Q Do you have the Advice of Rights Form in front of you?
A It is here somewhere. I'm searching for it as well but if it helps.
(Mr. Loonam handing to Mr. Dinnerstein)

MR. DINNERSTEIN: This is Government 310. This is in evidence, Your Honor.
Q It indicates that you gave him -- you wrote this down, right, so you'd rear the time that he received his rights?
A Yes.
THE COURT: Let's cut to the chase. Pick up the pace a little bit.
A (Cont'd): The form was administered at 1750, that is 5:50 and there's a time at the lower left. It is not on the screen. I think it is 5:52.
Q It was signed by you and by another witness; is that correct?
A Yes.
Q And what was the name of the other witness?
A I believe that's Detective Murphy's signature.
Q And Mr. Medunjanin signed the name, is that correct or there's a scrawl that looks like his signature?
A Yes, that is his signature.
Q And sir, you knew at that time that he was in an automobile accident at around 4:00 p.m.; is that correct?
A I think it was little earlier than that.
Q About 3:45?
A I will put it more towards 3:20, 3:30 but same difference, sure.
Q Found there was substantial damage to the vehicle, did

you know that?
A I had not seen the vehicle.
Q And now you know there was, in fact, substantial damage; is that correct?
A Yes.
Q And you knew the reason he went to the hospital was to receive medical treatment; is that correct?
A I believe he was transported there so they can check him out.
Q And there seemed to be no injury based on what you saw?
A What I saw was what I was told and what the defendant told me.
Q Is that he wasn't injured?
A Yes.
Q And that you then left the hospital; is that correct?
A Yes.
Q And what time was it that you left the hospital about?
A I think it is approximately 8:00 p.m. or so.
Q So he was in the hospital a few hours?
A I believe so. Two hours or so.
Q Couple of hours after you came to the hospital; is that correct?
A Yes.
Q Now, you know what time it was that he arrived at the hospital?

A I don't.
Q Now, where did you go when you took him?
A We went -- when we left the hospital we went to the JTTF office.
Q By the way, you took him to the JTTF office in Manhattan; is that correct?
A Yes.
Q And was he handcuffed at that time?
A No, sir.
Q Was he under arrest at that time?
A I don't -- no.
Q When you got to the hospital it is your understanding that he was under arrest; is that correct?
A No.
Q Well, he was handcuffed; isn't that right?
A Yes.
Q And you were the one who asked that his handcuffs be removed; isn't that correct, sir?
A I think I actually removed them myself.
Q Now, did you inform him that he wasn't under arrest?
A No.
Q Did you tell him that he was free to leave any time he wanted to?
A We explained that we just wanted to talk to him.
Q Did you tell him he could leave because he wasn't under

arrest?
A No.
Q Did you want him to believe that he was under arrest and that he was not free to leave?
A No, we wanted to keep talking to him.
Q Did you want him to remain in your custody?
A Yes.
Q Now, what time did you get to the JTTF office?
A I would estimate about 8:30, 8:45, and this is, again, just estimating the time it takes to leave the hospital and get through Manhattan.
Q Did you write it down anywhere?
A I did not.
Q Now, the JTTF office I presume also has tape-recorders; is that correct?
A Yes, we had them there.
Q Did you use one?
A No.
Q And that is because of the FBI policy; is that correct?
A Yes.
Q And do you think, sir, as you sit there now that that is a good policy?
MR. LOONAM: Objection.
THE COURT: Sustained.
Q Sir, you took notes; is that correct?

A Yes.
Q You spoke to him for quite a long time; isn't that correct, sir?
A We spoke for about another three hours, three, four hours.
Q Now, sir, when you say "we" who spoke?
A Myself, the defendant, the Detectives Murphy, Detective Carny, Detective Maysonet, and then another agent. We weren't all in there at the same time. It was different people different times. I was in there throughout, though.
Q And actually, wasn't the conversation with him -- didn't it run from about seven in the evening until about two o'clock in the morning?
A I -- I don't know about that seven in the evening.
Q Did it go to two o'clock in the morning?
A Just short of two in the morning, yes.
Q Let's assume --
A There's eating and bathroom break and prayer time in between.
Q He prayed on a regular basis?
A Did I pray, no.
Q No. Did he pray?
A I don't know if it was a regular basis but I think we broke at some point so he could do that.
Q Now, you think, you don't remember?

A I don't. I don't remember if it was at the end of the interview, the beginning of the interview, I don't.
Q How did he seem to be after this day, did he seem upset?
A No.
Q Did he seem friendly towards you?
A Yes.
Q Now, sir, you had just provided him on that same day with a search warrant; is that correct?
A Yes, sir.
Q And the search warrant indicated that he was being charged with very serious crimes; isn't that correct?
A I believe he was being investigated for serious crimes, yes.
Q Well, the search warrant -- these crimes in Exhibit G 2332 AA2 and 2339 D --
MR. DINNERSTEIN: This I think is in evidence, Your Honor.
Q This is what you handed him when you were at his house on January 7th of 2010; is that correct?
A Yes.
Q And he asked you what those numbers meant; is that correct?
A Yes.
Q And you told him -- your advice to him was go look it up on the internet, right?

A I believe I said he could speak to his attorney about that.
Q Did you mention anything about the internet?
A I may have.
Q You may have asked -- you may have said you can look it up, right?
A I may said you can look them up, yes.
Q You didn't tell them these were very, very serious charges; is that correct, sir?
A It is our understanding that we had already spoken to him about terrorism investigation. That was kind of apparent.
Q And you say that after this car crash that he was in, and after you gave him the Miranda Warnings and after you provided him with the search warrant, he was friendly to you; is that your testimony, sir?
A Yes, I would put it friendly. He was relieve to get it off his chest. He was proud of his accomplishments.
Q He was proud of his accomplishments?
A Yes, the training he had received.
THE COURT: Hold on. One at a sometime?
Q He was proud --
THE COURT: Stop.
MR. DINNERSTEIN: Okay.
THE COURT: Do you want an answer to that, he was proud of his accomplishments?

Q Yes, what did you mean?
A I believe there was a sense of pride of being able to go from planning to go to the Jihad, to actually going over and meeting with important members of al-Qaeda and receiving some training.
Q And did you write there anywhere in your handwritten notes on this occasion?
A I believe it's speaks in my notes?
Q Yes, in your notes?
A There's comments throughout about the al-Qaeda training and members he met.
Q Did you ever write that he was proud of his al-Qaeda training?
A No, that is not what a 302 is for.
Q That is just for bringing that up before jury; is that correct?
MR. LOONAM: Objection.
THE COURT: Don't do that, counsel. You know better.
Q Now, again, on this occasion you, of course, did not tape-record the conversation, right?
A Correct.
Q And you would agree, sir, would you not, that if you did tape-record the conversation we would know whether or not he spoke with pride?
THE COURT: We've covered this. You can argue it to

the jury. We've have covered the tape-recorder part. Exhausted that.

Q Tape-recording is --

THE COURT: Sustained. Sustained. You have covered that. I will let you argue it but let's focus on treading on ground we haven't already gone over.

MR. DINNERSTEIN: You are right, Your Honor.

Q Now, sir, we need to, of course, take your word that he got --

MR. LOONAM: Objection.

THE COURT: Sustained.

Q Now, you woke up on January 7th in the morning; is that correct, sir?

A Did I wake up on January 7th in the morning?

Q Yes, in the morning, right?

A Yes.

Q And you were up for a rather long period of time during this interrogation or interview of Mr. Medunjanin; is that correct?

A I was awake for the entire interview, yes.

Q And sir, the entire interview didn't end until two o'clock in the morning; isn't that correct?

A About two o'clock, yes.

Q And then on the next day you continued to interview Mr. Medunjanin; is that correct?

A Yes, sir.
Q And would it be fair to say that you were tired?
A Yes.
Q And do you think, sir, when you are tired that that affects your ability to remember things?
A To some degree it is relevant, yeah.
Q Would you agree that generally memory is less good when a person is tired?
A Yes.
Q Now, sir, he brought up a number of topics during the interview; is that correct, sir?
A Yes.
Q Now, he brought up the video game Grand Theft Auto; isn't that correct?
A Yes.
Q And you actually wrote that down in your 302 report; is that correct?
A Yes, sir.
Q And what was the nature of the context that he brought up Grand Theft Auto?
A We were discussing the car crash. He told us that he was surprised that there was no large explosion that killed himself and others. He was surprised to be unharmed. He jumped out of the car. He thought about his next move. He knew there would be surveillance agents that were coming, so

he thought about taking one of FBI agent's cars, as in Grand Theft Auto, taking over the car, and leaving.
Q He, of course, didn't do anything like that, right?
A He did not do that.
Q And did you have a sense that he looked at the car crash as if it was a video game?
A No.
Q Did you bring up the idea of Grant Theft Auto or did he?
A He did.
Q You know that Grand Theft Auto is a video game that has car cashes; isn't that correct, sir?
A Yes.
Q Now, he also said that he panicked once he saw the search warrant; isn't that correct, sir?
A I think he said is he panicked after he researched violations and the search warrant.
Q So you gave him the search warrant and he looked it up on the internet, is that correct, based on what he told you?
A Yes.
Q And that as a result of what the charges are, he says that he panicked; is that correct?
A Yes. He said he wanted to conduct an act of Jihad before being arrest.
Q Well, sir, what you wrote down was that he panicked; isn't is that correct, sir?

A Do you mind if I --
Q Page three.
A Make sure. Which 302 are we talking about?
Q FA 10.
THE COURT: Put it on the screen and show it to him.
MR. DINNERSTEIN: Sure. I'm sorry, Your Honor.
THE COURT: There you go.
Q The first paragraph, do you see that, sir?
A Yes.
Q And there's an indication that he said panicked after he learned about what the statutes indicate?
A Can I read it?
Q Sure.
A It says here Adis --.
THE COURT: No. He thought you meant to yourself.
THE WITNESS: Oh, I'm sorry. Can I read out loud?
THE COURT: No. Don't read out loud.
What is the question, whether he put in his report the word panicked?
MR. DINNERSTEIN: Yes.
Q Did you put in the word panicked?
A The word panicked is in here.
Q Is there anything in that paragraph about Jihad?
A The word Jihad is not in there (perusing) -- in that paragraph.

Q Now, he also mentioned that he had gotten in arguments with Najibullah; is that correct?
A While in Pakistan, yes.
Q And that those arguments became violent; is that correct?
A Those what?
Q Those arguments became violent?
A Yes, he said he pinched the wall, yes.
Q Did he ever say he punched Najibullah?
A I don't think he told us that.
Q Now, he also mention that when he was in Pakistan there were drone attacks that were going on?
A I believe he said he was fearful of drone attacks.
Q Did he say there were drone attacks?
A I would have to read it again.

THE COURT: Could you invite his attention to a part of this report. There is no reason for him to be flipping through the pages.

MR. DINNERSTEIN: Page nine.

THE COURT: Put it on the screen and show it to him.

THE WITNESS: Thank you.

Q Do you see the second full paragraph, sir? You read that to yourself.
A Yes, I see it (perusing).
Q Did he indicate that there were drone attacks?
A There's nothing about drone attacks in there. There is

some mention of firing a missile strike and hearing the drones.
Q Is there an indication that they didn't stay out much during the daytime because of the concern about missile strike?
THE COURT: Are you talking about what's in his report or what the defendant said to him.
Ask him if he recalls what the defendant said to him.
Q Did the defendant say anything about not being out much the daytime?
A Yes.
Q And what he did say about that?
A He said there was not much time spent outdoors in the daytime because they could hear drones overhead. They were fearful of the missile strikes.
Q Did he tell you that he was pressured by Abdul Hafeez to be a suicide bomber?
A Yes, he said several he was asked by Abdul Hafeez to be a martyr or suicide bomber.
Q And he said continually that he did not want to be a suicide bomber; isn't that correct, sir?
A He said he considered it. Wasn't sure, and then ultimately decided it would have been better to have joined the Taliband.

Q And that he did not want to be a suicide bomber; isn't that correct?
A I don't recall him actually ever saying he did not want to be a suicide bomber.
Q Did he say, sir, he did not want to participate in a suicide mission?
A I missed the first part.
Q Did he say to you that he did not want to participate in a suicide mission?
A Yes.
Q And he said that he would not, and that was his final response to Adul Hafeez, that he did not want to participate in a suicide mission?
A Yes.
Q Now, sir, you said on direct examination -- excuse me.
Do you know whether or not -- when he was at the camp whether or not he had his passport?
A Adul Hafeez had taken his passport before they got to the training camp. He did not have it while he was there but it was returned to him afterwards, yes.
Q And afterwards meaning after he left the camp he got his passport back; is that correct?
A Yes, after the training camp, yes.
Q Now, you said on direct examination that he said that he wanted to fight and kill U.S. soldiers; is that correct?

A Yes.
Q Did you ever write that down in any of your notes, sir?
A I'll have to check my notes. That is something that would probably not have stuck out in my mind.
Q Do you want -- do you need to check your notes or do you just remember that he said that?
A Do you want to guide me my notes or -- sure, I'll check my notes.
THE COURT: No. You are not going to check all your notes.
What is your question, Mr. Dinnerstein?
Q Do you remember writing that down, sir?
A I do not recall writing that down.
Q Isn't it a fact, sir, that what he told you was he wanted to defend Muslims?
A In the first interview that was said, yes.
Q In the interview on January 7th isn't that what he said, he wants to defend Muslims?
A At some point during the interview he may have said that was the original intention.
Q Didn't he also say to you, sir, that he believed in terms of the 911 attacks that the United States should have been able to prevent it; isn't that what he said?
A I don't recall that.
Q Isn't what he said, that there should have been better

U.S. intelligence to the 911 attacks, so it would not have happened?
A He may have said that.
Q And didn't he say that i was his understanding that the 911 attack was done by al-Qaeda?
A No. He did not believe --
Q I'm sorry?
A He did not believe 9121 was an attack conducted by al-Qaeda.
Q Did you write that down anywhere, sir?
A No.
Q Isn't it a fact that he never said to you that he loves Osama Bin Laden?
A He said that.
Q Did you write that down?
A I personally did not. It's in the notes.
Q I'm sorry?
A I think it is in the notes if we take a look.
Q Your notes?
A Notes from that interview. We took different turns during that interview taking notes.
Q Who is "we"?
A The interviewers in the room. I could list them again, if you like.
Q Carney and Murphy?

A And Maysonet, yes.
Q When you asked him questions -- do you know what a leading question?
A I do now, yes.
Q Did you ask him leading questions when you spoke to him?
A No.
Q Just asked him to talk, right?
A We engaged in conversation, yes.
Q Now, you knew that shortly after Mr. Medunjanin left the camp he flew home; isn't that correct, sir?
A Yes.
Q You now know that he had a three month extension on his visa and he chose not to use it; isn't that correct, sir?
A Yes, I believe, yes.
Q Now, you say that on January 8th there was a point that you stopped questioning him; is that correct?
A Yes.
Q And that's because he signed the form saying that he wanted to speak to his lawyer; isn't that correct?
A Yes.
Q And then he went to court and he was arraigned; isn't that correct?
A Eventually. I'm not sure that happened on the 8th, but yes.
Q Now, isn't it a fact that the form said that you can

continue to talk to him but that the lawyer needed to be present?
A I'm not sure all of the particulars and in the form if we can look at it, we could determine that.
(Mr. Dinnerstein and government counsel conferred)
THE COURT: This in evidence?
MR. DINNERSTEIN: Government Exhibit 314.
MR. LOONAM: In evidence, Your Honor.
MR. DINNERSTEIN: In evidence Your Honor. I'm sorry.
Q You see paragraph ten?
A Yes, sir.
Q Would you say that -- you see where it says here: I understand the foregoing and I hereby waive my right to a speed arraignment before a Magistrate Judge or other judicial officer?
A Yes, I see that.
Q Now, that was not crossed out, was it?
A No.
Q It says (reading): After I waive my rights to reasonable --
THE COURT: Slow down. You are reading too fast.
Q (Cont'd reading): Waive my right to a reasonable bail fixed, waive my right to have a lawyer represent me in connection with my arraignment and waiver my right to be --
THE COURT: We can't see it.

MR. DINNERSTEIN: I'm sorry.

(Cont'd reading): Waive my right to be interviewed by an officer of pretrial service division. I waive these rights knowingly and intentionally and without any promise having been made to me.

Is that on that form that Mr. Medunjanin signed?

A Yes, sir.

Q Was that paragraph crossed out?

A No.

Q Now, then the next paragraph says (reading):

I understand that I may be lodged overnight in a detention facility or in the alternative, remain in the custody of the FBI.

Was that paragraph crossed out?

A No.

Q So, in other words, by those two paragraphs Mr. Medunjanin was saying that I'm willing to talk to you guys but I want my lawyer present?

A No. I believe that paragraph's about pretrial services.

Q So that paragraph means that he is refuses to talk to you?

A No. That is not how I understand it.

Q I see.

Now, after Mr. Medunjanin was arrested on January 8th and brought to court, did you speak to

Mr. Medunjanin again?
A Yes.
Q Were there proffer sessions with you and Mr. Medunjanin?
A I'm not sure if it was an actual proffer session, but we met again at the offices of the United States Attorneys, if that is what you are talking about.
Q The U.S. Attorney was also present during these meetings?
A Yes.
Q And Mr. Medunjanin's lawyer was also present during these meetings; is that correct?
A Yes.
Q And there was a discussion with him about cooperating with the government; is that correct?
A Potential cooperation, yes.
Q And for him to cooperate he would have had to admit that he was a suicide bomber, right?
A I don't know about that. That -- I know he would have to plead guilty to certain charges.
Q Sir, was he told that if he didn't cooperate that he would face additional charges?
A I think he was told he could possibly face additional charges.
Q That had substantial --
MR. DINNERSTEIN: Your Honor, maybe I should approach?

MR. LOONAM: Objection; relevance.

THE COURT: Overruled. You think you need to approach?

MR. DINNERSTEIN: I guess I'll ask the question and then I'll find out.

THE COURT: Okay.

Q Was he told that he could face charges which would have a mandatory life sentence?

A I don't specifically recall what he was told on that day.

MR. LOONAM: Objection.

THE COURT: Overruled.

Q Do you know as he sits in this courtroom today he faces charges that have a mandatory life sentence?

MR. LOONAM: Objection.

A Yes.

THE COURT: Overruled.

Q And was he told that if he did not cooperate and did not plead guilty, he would be sent to a super max prison?

A That does sound familiar.

Q Was he described or was he told about what a super max prison was like in terms of the conditions?

A Yes. If that took place, yes. That sounds familiar, yes.

Q And even after that, Mr. Medunjanin said I'm not a participant in a plan to be a suicide bomber?

MR. LOONAM: Objection.
THE COURT: Overruled.
A I don't recall that.
MR. DINNERSTEIN: I have nothing further.
Thank you very much, Your Honor.
THE COURT: Thank you, Mr. Dinnerstein.
Is there any redirect?
MR. LOONAM: There is Your Honor. Brief.
THE COURT: Go ahead.

REDIRECT EXAMINATION.

BY MR. LOONAM:

Q You were asked questions -- a lot of questions about your notes and your 302s, do you remember those questions?
A Yes.
Q And when you were asked questions repeatedly about whether you wrote something down, did you consider that -- those questions pertaining to just the notes?
A Yes, I thought we were talking about the notes.
Q So things may have been written down in reports that didn't appear in the notes necessarily?
A Absolutely.
MR. DINNERSTEIN: Objection; leading. Form of the question, Your Honor.
THE COURT: Overruled.
A Yes.

Q So there are questions about the interview of the defendant on September 14th, do you remember those questions?
A Yes.
Q And the defense asked you questions -- Mr. Dinnerstein asked questions that Mr. Medunjanin told you that Americans hate Muslims and you were asked whether you ever wrote down that. Did you, in fact, write that down somewhere?
A Yes.
Q If I can direct you to your 302 for that day, did you write that down in the 302 report memorializing that interview?
A Yes.
Q And when did you draft that 302 report with respect to how close in time did you draft it to when you interviewed the defendant?
A The very next morning.
Q You were asked questions about the defendant told you on the 14th one of the problems with America is their support for Israel, and you were asked whether you had written that down anywhere, did you write that down anywhere?
A Yes.
Q And where did you write that down?
A In the same 302.
Q And that was the morning after the interview of the defendant?

A Yes.
Q And you remember that fact when you wrote it down in your report?
A Yes.
Q As you sit here today on the stand, do you remember the defendant making those statements?
A Yes.
Q You were asked questions about, you know, the defendant's statement during the interview of the 7th about how he loved Osama Bin Laden more than himself, do you remember those questions on cross-examination?
A Yes.
Q You were asked questions about whether that statement appeared in the notes, do you remember that question?
A Yes.
MR. LOONAM: I am going to show the witness the 3500 exhibit for those notes, just the witness, Your Honor.
Q Does that statement appear in the notes?
A Yes.
Q The 302, the report, the defendant's statement on the 7th, approximately how long is that 302?
A Approximately 16 pages.
Q And single spaced?
A Yes.
Q The defense also asked questions of you about the

defendant being friendly during the course of the interview and if the defendant was friendly during the course of the interview from the hospital and then at the offices of JTTF on the 7th and 8th, do you remember those questions?
A Yes.
Q And did the defendant ever explain to you why he thought he could be friendly with you during the course of the interview?
A Yes, he did.
Q And what did he explain to you about that?
A At the hospital he explained that -- this is after he asked us if we would do a prisoner swap, we explained that that is not really what we are doing. I explained that we were like enemy combatants and that we could be enemies but still speak to each other on civil or respectful manner.
MR. LOONAM: No further questions.
THE COURT: Thank you.
MR. DINNERSTEIN: Just a couple.
THE COURT: All right.

RECROSS EXAMINATION
BY MR. DINNERSTEIN:

Q The 302 that Mr. Loonam just referenced regarding the interview of Mr. Medunjanin on January 7th and January 8th, when was that particular 302 transcribed?
A The interview on the 7th was transcribed on the 13th.

Q So six days after the interview; is that correct, sir?
A Yes.
MR. DINNERSTEIN: Thank you.
Nothing further.
THE COURT: Thank you. You can step down.
Call your next witness, please.
MR. BITKOWER: The government calls Edward Parnetta.
THE COURT: Good afternoon.
THE WITNESS: Good afternoon, sir.
E D W A R D P A R N E T T A , having been first duly sworn/affirmed, testified as follows:
MR. BITKOWER: May I inquire?
THE COURT: Yes.
DIRECT EXAMINATION
BY MR. BITKOWER:
Q Good afternoon, sir.
A Good afternoon.
Q How are you currently employed?
A I'm a special agent with the FBI.
Q How long have you been a FBI?
A For six years.
Q And prior to joining the FBI, how were you employed?
A I was an officer in the United States Army five years.
Q And did you serve abroad?
A I did. I served in Iraq in 2003.

Q What is your current assignment with the FBI?
A I am currently on the Joint Terrorism Task Force on Squad CT 4 which investigates threats related to Pakistan and Afghanistan.
Q I want to direct your attention to January 7th of 2010. What was your assignment at that time?
A I was on CT4.
Q Just keep your voice up and you can move the microphone if you like.
A Sure.
Q On January 7th of 2010 were you working that day?
A I was.
Q And did there come time that day that you learned of an arrest concerning an investigation that you were involved in?
A I did. It was in the evening.
Q Who was arrested?
A Adis Medunjanin, the defendant.
Q And do you see this individual in the courtroom?
A Yes, I do. That is Mr. Medunjanin over there with the beard and glasses sitting over there at the table.
THE COURT: Identifying the defendant.
Q Did you personally have any responsibilities with respect to the arrest of the defendant on that day?
A The team went out to go and interview Mr. Medunjanin at the hospital. I stayed back at the Joint Terrorism Tax Force

and supported that team.
Q How did you support the team from the JTTF?
A I was in communication with Special Agent Azad and I could conduct research or records check for the team while they are conducting the interview.
Q Did you have any role in facilitating the defense arrival to the FBI building?
A Yes, I did. Special Agent Azad and I communicated while he was in the hospital, while they were on route back to The Joint Terrorism Task Force and I was responsible for making sure an entrance was secured and an interview room was available.
Q And approximately, what time do you say did the defendant arrive at the FBI building?
A Between eight and nine p.m.
Q And was the defendant in custody when he arrived?
A He was.
Q And did there come a time that you, yourself, took part in the interview of the defendant?
A Yes, I did, early the next morning.
Q When you say "early the next morning"?
A That night but into the 8th.
Q And approximately, what time was it that you, yourself, personally took part in the interview?
A Probably around 2:30 or 3 a.m.

Q And were you the first agent to interview the defendant?
A I was not.
Q Did you play any role in administering the Miranda Warnings that day?
A No, I did not.
Q Did you play any role in administering any kind of waiver that day?
A No.
Q Who had been interviewing the defendant previously before you entered the room?
A Special Agent Azad had been involved, Detective Michael Carney, Detective Angel Maysonet and Detective Robert Murphy.
Q Can you describe what, if anything, you were doing in the time immediately before you entered the room?
A Well, again, I had been in communication with Special Agent Azad intermittently and based on the information he was providing to me, in addition to what I knew about Pakistan and about threats in that area, I started preparing photographs to show the defendant.
Q And can you estimate, approximately, how long a portion of interviews lasted while you were in the room in the early morning of January?
A I will say about an hour.
Q Can you describe what the tone was like in the interview room?

A The tone was comfortable, it was relaxed. The defendant was engaged with the interviewers. They seemed to have good comfortable relationship, a good dialogue that went back and forth, and I remember, you know, people smiling. It was pretty relaxed.

Q As far as you observed, did the defendant ever resist answering any questions that were asked of him?

A No.

Q And when the defendant actually answered questions were his answers narrow, broad or somewhere in between?

A Generally broad. He tended to elaborate after being asked a question.

Q And did there come a time that you left the interview room?

A I did.

Q Approximately what time was that?

A Four o'clock, 4:30 perhaps.

Q Did you have any further duties with respect to the defendant's custody that night?

A Well, the defendant -- the interviews were ended around that time shortly after I left, and the defendant was asked for or instructed to go to bed. So while that was being arranged, I went and got a blanket and pillow for the defendant and brought that back to him.

Q Can you describe to the jury what, if anything, was the

plan for watching the defendant that night while he slept?
A Two agents in shifts were responsible for watching the defendant while he slept.
Q And were you one of the agents assigned to watch the defendant while he slept?
A No, I wasn't.
Q What was your plan?
A My plan was to go home.
Q Did you, in fact, go home at that time?
A I didn't.
Q Can you explain why you didn't go home?
A When I brought the blanket and the pillow to the defendant, he explained to me that he was not tired, he wasn't interested in going to bed, and he wanted to keep talking.
Q And was that request to continue talking initiated by you or by the defendant?
A By defendant.
Q And how did you respond?
A I said, of course, I obliged him.
Q Did you, in fact, continue to talk to the defendant that morning?
A Yes. We had a discussion in the interview room -- myself Special Agent Craig Goldstein, and Special Agent Farbod Azad.
Q Approximately how long did you talk?
A Thirty to 45 minutes.

Q During that 30 to 45 minutes were there topics the defendant appeared particularly interested in?
A Yes. We talked about my experiences in the military. I had having served in Iraq, and the conditions under which we kind of find yourself in a war zone. They were conditions that are probably similar to what he experienced --
MR. DINNERSTEIN: Objection.
THE COURT: Sustained. Structure this. These are the defendant's statement?
THE WITNESS: Well, he was interested in that.
THE COURT: Structure this.
Q Can you explain when -- who, first of all, discussed the military service?
A I believe I brought it up.
Q And can you explain what, if anything, you observed about the defendant's reaction when you brought up military service?
What did you directly observe?
A He was enthusiastic to talk about that topic.
MR. DINNERSTEIN: Objection to the characterization.
THE COURT: Overruled.
Q Besides your military experience, were there other topics that the defendant himself brought up?
A Yes, he brought up the topic of religion.
Q And can you describe what the defense tone or demeanor was during the discussion of religion?

A He was enthusiastic in talking about it. He was interested in expressing his point of view to us.
Q Can you explain how it is the discussion ended that night?
A The discussion ended when I recognized that we kind of were carrying on for a certain amount of time, and that he had been instructed to go to bed, and I knew that the next morning was going to be -- the next day for him was going to be long, so I ended the discussion.
Q Had the defendant ever requested to end the interview?
A No, he didn't request it.
Q Did he request to go to sleep?
A No.

MR. BITKOWER: No further questions.

THE COURT: Thank you, Mr. Bitkower.

Mr. Dinnerstein.

CROSS-EXAMINATION

BY MR. DINNERSTEIN:

Q Now, you described on direct examination that his tone was friendly; is that correct?
A Yes, I would say friendly. He was interested in providing information. There was a good friendly dialogue going back and forth.
Q And that originally when you started the conversation that you entered the room, it was -- you thought it was about

2:30, three o'clock in the morning; is that what you said on direct?
A That sounds right, yes.
Q There were other agents with him at that time?
A Yes, there were other agents with him when I walked in.
Q Who were the other agents?
A Special Agent Azad was there, Detective Michael Carney was there and then I believe Detective Maysonet, and Detective Murphy or combination of those two. I can't remember exactly who was in there.
Q Now, it was your intention to go home at that time; is that correct, sir?
A No. When I walked in my intention was to present the photographs that I had prepared for the defendant.
Q And did you do that?
A I did.
Q And was he cooperative during that period of time?
A Yes, he was cooperative.
We showed him photos and he would identify particular people and elaborate on relationships with that person.
Q And now this was the first time that you met with Mr. Medunjanin; is that correct?
A Yes, I might have seen him briefly when he came into the JTTF.

Q But other than on that particular occasion, you had not seen him before; is that correct?
A I had seen him in September when he was interviewed at the Eastern District of New York but I had not interacted with him.
Q You had no interaction with him?
A That is correct.
Q We are talking about on September 17th; is that correct?
A Roughly. Yes.
Q Eastern District of New York?
A Yes.
Q Were you present resent during this search warrant execution on September 14th?
A No, I wasn't.
Q Now, sir, of course there was no tape-recording of this conversation; is that correct?
A No.
Q And you indicated that at one point on direct examination that seemed he seemed to be -- he was enthusiastic, right?
A Yes.
Q And he was very chatty and talkative; is that correct?
A I would say he was talkative, yes.
Q He thought -- he continued to talk; is that right? When a questions was asked, he would give a lot of information?
A Yes.

Q Not like what you are doing when you answer in one or two words?

MR. LOONAM: Objection.

MR. DINNERSTEIN: I withdraw the question.

Q You thought there was a good rapport going on; is that correct?

A Yes, I thought so.

Q Now, did you think that his attitude -- this was a gentleman that you knew had on that same day or the evening or the daytime before was involved in an automobile accident; is that correct?

A Yes, I was aware of that.

Q And you were aware that he was now being charged with very, very serious charges; is that correct?

A At that point I don't know if he was being charged.

Q Well, sir, you just you said on direct examination that when he came into the precinct he was under arrest; is that correct?

A Yes.

MR. BITKOWER: Objection to precinct.

MR. DINNERSTEIN: I am sorry.

Q At the JT -- at the offices he was under arrest?

A Yes, he was under arrest.

Q What was he being charged with when he came into the offices?

A I believe that he was being charged -- at that time I believe he was under arrest based on the car accident that he'd been involved with.

Q Do you know whether a car accident is a federal crime, sir?

THE COURT: Come up to side-bar.

(Continued on next page)

(side-bar)

THE COURT: This is confusing.

MR. DINNERSTEIN: I will move on.

THE COURT: Federal, state. It doesn't advance the ball. Move on, please.

(End of side-bar)

(Continued on next page)

(The following took place in open court)

BY MR. DINNERSTEIN:

Q Sir, you believe he was under arrest for the car accident; is that correct?

A It was my understanding that he had been arrested initially for the car accident. The reason why he was being brought in the JTTF had to do with the interview that had taken place earlier and his willingness to continue talking.

Q You are, of course, not a psychologist; is that correct, sir?

A No.

Q You received no training in psychologist; is that correct?

A No.

Q And you don't know if the way he was behaving was as a result of some anxiety attack; is that correct, sir?

MR. LOONAM: Objection.

THE COURT: Sustained.

Q Did he appear to you to be anxious?

A When I saw him in the interview room, no.

Q Did he appear to you to be a little frenetic?

A Frenetic, no.

Q He just continued to talk; is that correct?

A Well, I mean he didn't -- he elaborated on questions that were asked of him. He didn't talk nonstop.

Q Did you think, sir, that was a little odd?
A No. It is common for people that the FBI interviews to talk and answer questions.
Q Did he ask about a lawyer?
A Not in my presence.
Q At some point you went to get him some bedding; is that correct?
A That's correct.
Q And that is after speaking to him for an hour or so; is that right?
A Yes.
Q And then when you got the bedding he continued to want to talk; is that right?
A Yes, he explained to me that he wasn't tired, and he wanted to continue talking.
Q Would you agree with me, sir, that Mr. Medunjanin had had a pretty long day?
A Yes.
Q And that lots of things had happened to him on January 7, 2010?
A Yes.
Q Including the car accident?
A That's correct.
MR. DINNERSTEIN: Thank you, very much.
Oh, I'm sorry.

Q Did you know, by the way, whether or not there were media people who were trying to find out what was going on in terms of Mr. Medunjanin?

MR. BITKOWER: Objection.

THE COURT: Overruled.

A I did not know.

Q Did you hear from anyone regarding media attention on that particular day?

MR. BITKOWER: Objection.

THE COURT: Sustained.

MR. DINNERSTEIN: Sir, I have nothing further.

THE COURT: Thank you, Mr. Dinnerstein.

Nothing further, is there?

MR. BITKOWER: No, Your Honor.

THE COURT: Step down.

THE WITNESS: Thank you.

THE COURT: Call your next witness.

MR. LOONAM: We call Evan Kholmann, Your Honor.

THE COURT: Good afternoon.

THE WITNESS: Good afternoon, Your Honor.

E V A N F K O H L M A N N , having been first duly sworn/affirmed, testified as follows:

MR. LOONAM: May I inquire?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. LOONAM:

Q Good morning.

A Good afternoon.

Q What do you for a living?

A I work as an international terrorism consultant.

Q And how long have you been working in the field of international terrorism?

A I have been working in this field since February of 1998.

Q And where did you conduct your undergraduate work?

A I conducted my undergraduate education at Edmund A. Wash School of Foreign Service at Georgetown University in Washington, D.C.

Q Can you briefly describe the curriculum of your undergraduate studies?

A Yes, during my undergraduate studies at Georgetown I earned BSFS, a bachelor in science foreign service from the Edmund A. Walsh School of Foreign Service, that was in international politics was my major. I also achieved a certificate in Islam and Muslim Christian understanding from the Prince Al-Waleeb Bin Talall Center for Muslim Christian Understanding For CMCU at Georgetown University.

Q And what type of degree did you receive?

A BS Bachelor of Science in Foreign Service and also separately I received a certificate in Islam and Muslim, Christian understanding.

Q Did you write a thesis in connection with your studies?
A I did, yes.
Q Please tell us the title and focus of your thesis?
A The title of my thesis was the Arab Afghan case study. The purpose was for looking at transnational militants that had fought in the Soviet-Afghan war of the 1980s and then tracing how these individuals then left Afghanistan travelling elsewhere to fight in other conflicts subsequent to that one.
Q Do you hold a graduate degree?
A I do, yes.
Q What graduate degree do you hold?
A I have a J.D. or Juris Doctorate, law degree from University of Pennsylvania law school.
Q And did you continue your studies of international terrorism while at the University of Pennsylvania?
A I, did yes.
Q And can you please tell us about that.
A Yes. In addition to taking classes on, well, terrorism related issues in law school, I also did class work outside of law school in the graduate school of arts and sciences in Afghanistan and Islam.
Q And are you practicing lawyer?
A No, I am not.
Q And are you familiar with the organization called The Investigative Project?

A Yes, I am.
Q What is it?
A The Investigative Project is a counterterrorism think tank and watchdog group based in Washington, D.C., it founded in 1995 by former CNN journalist.
Q How are you familiar with that organization?
A I worked there between the years of 1998 and 2003.
Q And what was the last title you held at the Investigative Project?
A The last title that I held at the Investigative Project was senior analyst.
Q And can you please tell the jurors what you did as senior analyst at the Investigative Project?
A Yes, at the Investigative Project I conducted what is known as open source research on international terrorist organizations, with a focus on particular groups, namely, al-Qaeda, Hamas, Hezbellah, Lashkar-E-Taiva, and particularly while the investigative project I was involved in investigating the financing, recruit, communications, hierarchy and propaganda of these organizations.
Q And are you currently employed?
A Yes, I am.
Q And what do you do?
A I run a business known as Flashpoint Global Partners. Flashpoint initially was created in 2003 as

globalterroralert. Com and it has since expanded and gone out to a larger company.

Q And in connection with your company do you operate a website?

A I do, yes.

Q And what is the purpose of that website?

A The purpose of the website is to do number of things. It is to help people understand the kind of services that my company provides, but we also provide in our website at no cost translations and other material relevant to international terrorist organizations for the benefit of academics, policymakers and law enforcement, anyone with a particular interest in the kind of subjects that we study.

Q And what are the different types of sources that you use in your resources?

A We primarily use what are known as open sources. In other words, we focus on sources that are publicly available. However, they may be difficult to come by. In other words, we don't rely necessarily on classified material that's gathered by government agencies. We go to focus on information that we can actually trace the source of that we can understand the credibility of, the authenticity of, that there's an indicia of reliability that we can follow.

Q And then what does your company do with that open source material?

A We take that open source material and first of all, we archive it. We have one of largest archives of this kind of material in the world, and then we take this material and eventually distill it is down in a variety of different products with we produced for our clients -- everything from open source memoranda about the particular aspects of international terrorist organizations, and their hierarchy, their recruitment, their financing, etcetera. We also help produce media documentaries. We help produced a variety of different products.

Q Now, have you worked with U.S. agencies in the past?

A Yes, I have.

Q And can you give us an example or examples of some of the agencies you have worked with?

A In the past I have worked with the Federal Bureau of Investigation, the Department of Justice, the Department of Defense, the State Department, the Department of Treasury, the Department of Homeland Security, and a variety of other U.S. government agencies.

Q And in connection with your work with the FBI, when did that begin?

A I began working with the FBI, I believe, in 2002.

Q And does your work with the FBI, do you work in a consulting basis?

A That is correct, yes.

Q And does that work continue to the present day?
A Yes, it does, yes.
Q And have you received compensation for assistance you provided to the FBI?
A I have, yes.
Q And approximately, how much in total?
A I believe approximately $50,000 over the last 11 years.
Q And how much have you been compensated in total for you work with U.S. government agencies over the past ten years?
A Well, DOJ I have been compensated over last ten years, 11 years $550,000; and then I believe the DOD has compensated me in an additional approximately 150.
Q When you say DOD what are you referring to?
A Department of Defense, Military, Pentagon.
Q In addition to the U.S. agencies you worked with, have you worked overseas?
A Yes.
Q With which agencies have you worked with overseas?
A I have done work in the past on behalf of the New Scotland Yard Counterterrorism Branch. I have done work on behalf of the Central Scotland Police, West Yorkshire Police, International National Prosecutors of Bosnia -- sorry. Excise, me. Sorry. The Supreme Court of Bosnia - E-E Hervegobina, and I have also done work on behalf of Danish ET Police Intelligence Service. I've also done work on behalf of the

Australian Police, and the Prosecutor's Office, Office of New South Wales in Australia.

Q And in what capacity do you work with those agencies generally?

A I worked with them in terms of evaluating evidence and in terms of providing evidence from our archives, information from our archives which is of use to these organizations. I have provided expert analysis, expert witness testimony, variety of different services.

Q And have you worked with media organizations?

A I have, yes.

Q Tell us about that.

A Since October of 2004 I have been employed by NBC and MSNBC, and on air terrorist analyst. In addition to providing on air analysis, I also provide a lot of the building blocks that go into making news stories that appear on NBC and MSNBC about the international terrorist organizations activity.

Q Have you written any books or articles? Let's start with books, have you written any books during your career?

A I have, yes.

Q All right. What was the book?

A In 2004 I published a book al-Qaeda Jihad in Europe which was published first in London, and then later that year published by Palgrave MacMillan.

Q Are you aware whether your book is used by any academic

programs?
A Yes, I am.
Q Which programs?
A Variety of programs used as a course text in programs that are taught, including at locations such as John Hopkins School of Advanced International Studies, the Harvard Kennedy School of Government, Universities in the United Kingdom, Australia, and beyond.
Q Has your book been cited any other world publications?
A Yes, it has.
Q Which?
A Among other things, it was cited by the final report of by bipartisan congressional 911 commission.
Q And have you published any articles?
A Yes, I have.
Q And those articles have dealt with international terrorism?
A Yes, I have published numerous articles relating to international terrorism.
Q About how many?
A Probably about two to three dozen, a variety of different journals, both peer review journals, and other more kind of -- news style journals. And the last two journals that I published articles in would be the Journal African Security, which is a peer review journal, and I also published in the

West Point Counterterrorism Sentinel Journal.

Q What is peer review?

A Period review is a formal process whereby if someone is writing an academic article, academic piece, before it can be published it is first reviewed by peers, by others, who have knowledge in a particular area. The purpose for that is to make sure that before can you publish an academic quality article that has been thoroughly reviewed by others in the field, make sure that it is consistent with the information that is out there, that the research methods are legitimate and are authentic. The sources are legitimate and authentic.

(Continued on next page)

BY MR. LOONAM: (Continued)
Q What is social science?
A Social science is simply the science of studying social phenomena. So, the science of studying social phenomena like politics, history, government. Those are social sciences. Anthropology.
Q Okay. And within social sciences is there an accepted method of research?
A There are different accepted methods of research, yes.
Q And did you take any course work in techniques for research?
A I have, yes.
Q All right. Now, in addition to your work at Flashpoint, do you work with any nonprofit organizations?
A I do, yes.
Q Tell us about that.
A I work as a consultant on behalf of the NEFA foundation the Nine Eleven Finding Answers -- NEFA. NEFA was founded here in the United States as a 501(c)(3) nonprofit organization, which provides non-profit open-source information, research and analysis to a variety of different actors, everything from law enforcement, academics, policy-makers, media. Anyone with interest in publically-available information about terrorist organizations and their activity.

Q Now, prior this case, have you been retained as an expert in other Federal cases?
A I have, yes.
Q And in some of those other cases, did you work as a consultant with the Government?
A Yes.
Q And in some of those other cases, did you work as a testifying expert witness?
A That's correct, yes.
Q And what types of things do you do for the Government in cases where you're working as a consultant?
A When I'm working as a consultant on behalf of the Federal Government, I provide a number of different services. Obviously, we have an archive of materials relating to international terrorism; original video recordings, audio recordings, et cetera. Oftentimes, I'm asked to provide information that we have in our archive which is relevant to a particular aspect of terrorist activity.

I'm also asked to conduct reviews of evidences that are seized in individual cases, particularly hard drives that are seized in investigations, which we then go through piece-by-piece to try to identify the material that's on there, which are comparing and contrasting it with material from our own archive.

I have been asked to interview cooperating witnesses. I've been asked to do a variety of different tasks.

Q Have you been qualified as an expert witness previously and in a Federal District Court like this one?

A Yes, I have.

Q Approximately how many times have you been qualified as an expert in Federal Court?

A I have been qualified in the past a total of 23 times in U.S. Federal Court, 22 of which I actually testified in.

Q And you've been retained as an expert in this case; correct?

A That's correct, yes.

Q And how much compensation have you earned to date for your work on this case?

A To date, I have earned zero dollars, but I have an outstanding invoice for approximately $19,000.

Q $19,000?

A That's correct, yes.

Q And have you been qualified as an expert in the military commissions?

A I have, yes.

Q And what about foreign tribunals? Have you ever acted as an expert in foreign tribunals?

A Yes. I have been qualified as an expert witness in a variety of foreign proceedings in a total of ten countries, including Bosnia, Herzegovina, Australia, Scotland, the United Kingdom, Denmark and beyond.

Q Has a judge ever not allowed you to testify as an expert?

MS. CARVLIN: Objection.

THE COURT: Sustained.

Q As part of your research, do you investigate the presence of terrorist organizations on the Internet?

A That's correct, yes.

Q Approximately, when did you start doing that?

A I started doing this in approximately February of 1998.

Q All right. And what about radical Jihadist preachers? Do you investigate their presence on the Internet?

A I do, yes. That goes along with that and I've done that since about 1998.

Q Okay. And during your course work, have you become familiar with the concept of Jihad?

A Yes.

Q And during your course work, have you become familiar with Al-Qaeda?

A Yes.

MR. LOONAM: Your Honor, the Government moves to qualify Mr. Kohlmann as an expert witness in Al-Qaeda and sources of radical Islamist media.

MS. CARVLIN: No objection.

THE COURT: I'll receive him.

Go ahead.

MR. LOONAM: At this time, Your Honor, the Government would move to offer media previously identified as seized from the bedroom contained -- I'm sorry, the bedroom depicted in Government's Exhibit 64 in evidence.

And we move to admit Government's Exhibit 215.5, 215.34, 215.23, 215.25.

THE COURT: Any objection?

MS. CARVLIN: No, no objection.

THE COURT: Received.

(Government's Exhibits 215.5, 215.34, 215.23, and 215.25 were received in evidence.)

MR. LOONAM: Can I publish Government's Exhibit 64, Your Honor?

THE COURT: Yes.

(The above-referred to Exhibit was published to the jury.)

Q Are you familiar with somebody by the name of Anwar al-Awlaki?

A I am, yes.

Q Who is Anwar al-Awlaki?

A Sheikh Anwar al-Awlaki is, once again, the American national, an individual who gained a following here in the United States and other English-speaking countries, as a Salafi Muslim preacher who spoke English fluently and also who spoke Arabic fluently.

In 2003, Mr. Al al-Awlaki left the United States and returned to Yemen.

Q Okay. And are you familiar with Mr. Al-Awlaki's work?

A I am, yes.

Q And as a general matter, what's Mr. Al-Awlaki's message with respect to Jihad?

A Mr. Al-Awlaki is a very prominent strong advocate of violent Jihad; in other words, violent struggle. He believes or he believed that violence was an essential part of Jihad; that Jihad could not merely be spiritual struggle. It necessitated violence.

MR. LOONAM: Okay. Your Honor --

Q Are you familiar with a work called Constance on the Path of Jihad?

A Yes.

Q What is that work generally about?

A Constance on the Path of Jihad -- also known as the Thawabit Ala Barb al Jihad -- Constance on the Path of Jihad, was arguably one of Sheikh Anwar al-Awlaki most famous sermons. It was originally adapted from a book that was written by the founder of Al-Qaeda in Saudi Arabia --

MS. CARVLIN: Objection, Your Honor.

THE COURT: Overruled.

A An individual named Youssef Uyayri, who originally wrote the book in about 2002 and wrote it in Arabic.

Sheikh al-Awlaki took this book and translated it into English and he made it into an audio sermon in which he took the lessons that had been laid out by the founder of Al-Qaeda in Saudi Arabia about the necessity for Jihad, and tried taking those messages and catering them to an English-speaking western audience; and thus, came his lecture Constance on the Path of Jihad.

MR. LOONAM: Your Honor, at this time I request permission to publish a file of Government's Exhibit 215.5, seized from the room depicted in Government's Exhibit 64.

THE COURT: All right.

(The above-referred to Exhibit was published to the jury.)

(Audio played for jury.)

(Audio stopped.)

MR. LOONAM: One moment, Your Honor.

THE COURT: Is there supposed to be video with this as well?

MR. LOONAM: No, Your Honor.

(Audio played for jury.)

(Audio stopped.)

MR. LOONAM: Okay, I'm just going stop that.

Q Do you recognize that voice?

A I do yes.

Q And whose voice do you recognize that to be?
A That is Sheikh Anwar al-Awlaki.
Q All right.
MR. LOONAM: Let's see if I can get the counter here, Your Honor.
(The above-referred to Exhibit was published to the jury.)
MR. LOONAM: All right.
THE COURT: What's happening?
MR. LOONAM: I'll be right there, Your Honor. I'm just finding the right place to start.
THE COURT: Oh.
(Audio played for jury.)
(Audio stopped.)
Q Now, when Anwar al-Awlaki is referring to "people of the book," who is he referring to?
A He's referring to an Arabic expression, Ahl-al-Kitab, which refers to people, the book people that also believe in Abrahamic faith. In other words, Jews and Christians.
(Audio played for jury.)
(Audio stopped.)
MR. LOONAM: So, I'm going to stop that there for a moment.
Q Quickly, when al-Awlaki's saying fight and slay the pagans wherever you find them, what's the significance of that

in the global Jihadist movement?

A Well the idea here is that what al-Awlaki's is saying is, is that it is a necessity for believers in the religion to go out and kill those who disbelieve; to kill those who violate the religion or who simply don't believe in it and anyone who doesn't -- and anyone who doesn't submit to the jizyah, the tax upon non-Muslims.

THE COURT: Let's take our lunch break.

Don't discuss the case. We'll resume at 2:00 o'clock.

All rise.

(Jury exits at 12:56 p.m.)

(Continued on following page.)

(In open court.)

(The following occurs outside the presence of the jury.)

THE COURT: You can step out, Mr. Kohlmann.

THE WITNESS: Thank you, Your Honor.

(Witness excused.)

THE COURT: Have a seat, please.

Why is he here?

MR. LOONAM: Your Honor, he's here to explain some of the media that was seized from the defendant's bedroom.

He's also here to discuss the defendant's statement with respect to his Jihad; "that we love death more than you love life," and its appearance throughout, first by Osama bin Laden and then, repeatedly. Its historical grounding in the Koran and then by Osama bin Laden and then used by other suicide bombers in Al Qaeda attacks.

We've discussed this with defense; rather than play all the videos where this statement is used, we've merely come up with some of the statements on a PowerPoint where the relevant text is cited. He will discuss the basis of the text, the source of the text, to sort of explain why the defendant was using that statement.

THE COURT: When will we get to those things?

MR. LOONAM: This? Those things meaning, the we love death statement, and not what was seized from the defendant's house? This was seized from the defendant's house.

THE COURT: Oh, all of this was seized. What was that photo?

MR. LOONAM: The photo is the defendant's bedroom.

THE COURT: That's the defendant's bedroom.

How much longer is this testimony going to be, roughly?

MR. LOONAM: I'm trimming it down. I would, I can get done in 40 minutes, half an hour.

THE COURT: All right. Have a nice lunch.

Yes?

MS. CARVLIN: May I just raise one issue, Your Honor.

THE COURT: Yes.

MS. CARVLIN: You had previously given an instruction about expert testimony. I will ask you to repeat it now.

I think it's particularly relevant at this time that an expert is offered to aid the jury. To the extent that it aids the jury, that it's up to the jury to determine.

THE COURT: You want me to repeat that?

MS. CARVLIN: I would like you to.

THE COURT: I don't remember exactly what I said, but I remember the gist of it.

MS. CARVLIN: Yes.

THE COURT: I'll do that. If it's insufficient, you can tell me.

MS. CARVLIN: Thank you.

THE COURT: After I've given it.

All right, so we'll see you at 2:00 o'clock.

(Continued on following page with AFTERNOON SESSION.)

AFTERNOON SESSION.

(In open court.)

(The following occurs outside the presence of the jury.)

(Judge JOHN GLEESON enters the courtroom at 2:09 p.m.)

THE COURTROOM DEPUTY: All rise.

THE COURT: You can be seated in the back, please, sorry to keep you waiting.

(Defendant enters the courtroom.)

THE COURT: Okay, ready?

MR. LOONAM: Yes, Your Honor.

(Pause in the proceedings.)

(Continued on following page.)

(In open court.)

THE COURTROOM DEPUTY: All rise.

(Jury enters at 2:11 p.m.)

THE COURT: Please, be seated everyone.

Go ahead, Mr. Loonam.

MR. LOONAM: Thank you, Your Honor.

And Your Honor, if I could just republish the photograph, which is Government's Exhibit 65 that I had on the ELMO before.

THE COURT: Sure.

(The above-referred to Exhibit was published to the jury.)

MR. LOONAM: And I'm going to resume playing the file from the disk that was seized from the defendant's bedroom.

THE COURT: Okay. You can't do both at the same time.

MR. LOONAM: Okay, so I'll resume playing it.

THE COURT: Okay.

MR. LOONAM: I'll ask a question of Mr. Kohlmann, first.

DIRECT EXAMINATION

BY MR. LOONAM: (Continued)

Q Mr. Kohlmann, the lecture that we're listening to now, what is the title of this lecture?

A I believe the title is Constance on the Path of Jihad; Thawabit Ala Barb al Jihad.

MR. LOONAM: And I'm just going to play another brief segment from this file.

THE COURT: Hold on.

(Audio played for jury.)

(Audio stopped.)

Q And so, during that clip, Anwar al-Awlaki referred to the word kufr?

A Yes.

Q Can you please explain what that word means?

A Kufr is a singular form of the word disbeliever or infidel, the plural form of that is kufrs or infidels or disbelievers.

MR. LOONAM: Okay. I am now going to publish, Your Honor, on the ELMO, the disk seized. It's 215.23, seized from the defendant's bedroom.

And I'm not going to play this disk, just publish the cover of it.

THE COURT: This is in evidence?

MR. LOONAM: It is in evidence, Your Honor.

(The above-referred to Exhibit was published to the jury.)

Q All right, do you see the writing on this disk?

A Yes, I do.

Q Okay. And can you read the title of this disk?
A Yes: Voting is kufr, by Abu Hamza al-Masri.
Q Okay. Who is Abu Hamza al-Masri?
A Abu Hamza al-Masri, his real name is Mustafa Kamel, he is a cleric from the United Kingdom. He's originally from Egypt and he is widely known because of the fact that he has no hands and he has, part of his face is missing because during the late 1980s he was in Afghanistan and was the victim of an accidental bomb blast. He was learning how to build explosives and one went off in his face.

Since then, Abu Hamza has become one of the most well-known, worldwide well-known symbols of Jihad and the you Mujahideen. He has been an active proponent of violent Jihad and his sons and his godsons have been convicted of various terrorist acts.

MS. CARVLIN: Objection.

THE COURT: Overruled.

A And he himself was convicted in the United Kingdom of terrorism offenses. He's currently awaiting extradition from the United Kingdom.
Q All right. And was the notoriety that you just described of Abu Hamza, was that known in, you know, September of 2009?

MS. CARVLIN: Objection.

THE COURT: Sustained.

MR. LOONAM: I'm going to publish, just the cover, of Government's Exhibit 215.25.

(The above-referred to Exhibit was published to the jury.)

Q Again, can you, I'll ask you to just read the writing at the bottom of the disk (indicating)?

A Sheikh Abu Hamza Masri.

MR. LOONAM: Your Honor, I'm going to publish certain images and files that were, appear on Government's Exhibit 213, which is the image of the Dell seized from the defendant's bedroom which appears on Government's Exhibit 65.

(The above-referred to Exhibit was published to the jury.)

THE COURT: All right.

MR. LOONAM: And right now, if we could just have this showed to the witness.

THE COURT: Are you on the laptop now?

MR. LOONAM: I'm on the laptop now, Your Honor.

(The above-referred to Exhibit was published to the witness.)

Q Okay. Can you see images in front of you, Mr. Kohlmann?

A I see what appears to be the readout from a hard drive analysis.

Q Okay.

A There is an image, yes.

Q And you haven't seen this hard drive before; have you?

A No, I have not.
Q All right. I'm going to ask you: Do you see the created date here?
A Yes.
Q All right.
MR. LOONAM: I'm going to publish what's previously published --
MS. CARVLIN: Objection.
THE COURT: Is this in evidence?
MR. LOONAM: It is in evidence.
MS. CARVLIN: We have an agreement with respect to an aspect.
THE COURT: Come on up.
(Pause.)
MS. CARVLIN: I think we understand each other.
Objection withdrawn, Judge.
THE COURT: All right.
MR. LOONAM: What is Document 12891.1.JPG?
What's the created date associated with that file?
THE WITNESS: The created date is September 9th, 2009.
THE COURT: Excuse me, do you want this published to the jury?
MR. LOONAM: No, not at the moment, Your Honor. One moment.

(Pause in the proceedings.)

MR. LOONAM: Okay, if we could publish that now, Your Honor?

(The above-referred to Exhibit was published to the jury.)

Q Okay. And do you recognize the individual depicted in that photograph?

A Yes, I do.

Q Who do you recognize it to be?

A This is an individual of Kuwaiti origin by the name of Khalid Sheikh Mohammed.

Q All right. Khalid Sheikh Mohammed?

A Correct, yes.

Q Okay. And -- I'll leave it at that.

MR. LOONAM: If we could take that down.

Just for the witness, Your Honor.

All right, I'm pointing you to a file.

(The above-referred to Exhibit was published to the witness.)

Q Do you see the file 53329.JPG file?

A I do, yes.

Q And do you see the created date associated with that file?

A I do, yes.

Q And what is the created date?

A September 8th, 2009.

MR. LOONAM: If we could publish that for the jury, Your Honor.

(The above-referred to Exhibit was published to the jury.)

Q And what does this image depict?

A This image depicts a man on a horse carrying the flag of the Islamic Empire of Caliphate with the words Imam Anwar Awlaki written above.

In my knowledge, this was used as an advertisement for a sermon by, or features, Sheikh Anwar al-Awlaki entitled: Allah is Preparing Us For Victory.

Q And is this the same Anwar al-Awlaki who gave the Constance speech we justice listened to?

A Indeed, it is.

MR. LOONAM: All right, if we could take this down, Your Honor.

(Complies.)

MR. LOONAM: And I'm going to, if we could publish that for the members of the jury, Your Honor.

(The above-referred to Exhibit was published to the jury.)

Q And do you recognize the individual depicted in this image?

A Yes, I do.

Q Who do you recognize it to be?
A This is the founder and former leader of Al-Qaeda, the terrorist organization Al-Qaeda, Sheikh Osama bin Mohammad bin Laden.
Q And there's some writing that appears on this image, can you tell us what that writing is?
A Yes, this appears to be an advertisement for an audio recording entitled: Al Wal'a Wal Bara'a, recorded by Sheikh Abdullah al-Faisal.
Q Can you tell us who Sheikh Faisal is?
A Sheikh Faisal is a convert to Islam, originally from Jamaica. He later moved to the United Kingdom after studying Islam in Saudi Arabia and he began lecturing to a group of other Muslim converts in the U.K.

In 2003 Sheikh Faisal was convicted of soliciting to murder for inciting the murder of Hindus and Jews in the United Kingdom and he was eventually expelled from the United Kingdom to Jamaica.

He subsequently resurfaced about two years ago in Kenya, in east Africa, attempting to provide support to a designated foreign terrorist organization known as Al Shabaab. Shortly thereafter he was removed from Kenya and he is believed to be back in Jamaica at this moment.
Q And are you familiar with what role Sheikh Faisal plays in the global Jihad?

A I do, yes.
Q And what role does he play?
A He is known as one of the most extreme clerics, period, speaking English, Arabic, any language. He assists in recruiting English-speaking individuals to carry out violent acts, particularly violent acts of Jihad, again targeting Muslims, Jews, Christians, anyone who disagrees with his particular interpretation of Islam.
Q And have you listened to lectures recorded and distributed by Sheikh Faisal?
A Yes, I have.
Q And have you become familiar with whether Sheikh Faisal has expressed sentiments with respect to suicide bombing attacks?
A He has, yes.
Q And what are those views?
A He has aggressively encouraged individuals living in western countries to carry out suicide bombings, he has gone so far as to give advice to AIDS patients suggesting that the only way they can we deem their honor is to carry out suicide bombings.

MR. LOONAM: Your Honor, I am going to -- if we could take this down.

(Complies.)

MR. LOONAM: I am going to publish a file from

Government's Exhibit 215.34 in evidence, which was seized from the defendant's bedroom, depicted in Government's Exhibit 65.

(The above-referred to Exhibit was published to the witness.)

MR. LOONAM: Berit, can you help me with this?

(The above-referred to Exhibit was published to the jury.)

Q Do you see the work that was retrieved from Government's Exhibit 215.34?

A Yes, I do.

Q All right, and what's the title of this work?

A The title of this work is: The Maidens of Jannat (Paradise).

Q And are you familiar with this work?

A Yes, I am.

MR. LOONAM: All right, and Your Honor, I'm just going to go to a specific portion of this document.

(The above-referred to Exhibit was published to the jury.)

Q All right, can you see chapter 14 there?

A I can, yes.

MR. LOONAM: Let me make it a little bigger.

Q All right, what's the title of chapter 14?

A The title of chapter 14 is: A Shahid (Martyr) and His Special Virtue With the Maidens of Jannat.

Q What is Jannat?
A Jannat, in the Muslim faith, it's Paradise. It's an Arabic word meaning Paradise.
Q And what is a Shahid or martyr?
A A Shahid or martyr is somebody who has been slain or sacrificed their life in the cause of Allah, in the cause of Islam. That person is then referred to as a Shahid or martyr. In plural it's Shuhada.
Q All right. And what does this text discuss with respect to the Shahid in paradise?
A This text refers to the seven gifts that martyrs in Islam will receive upon reaching paradise, the incentives that they have to carry out an act of martyrdom.
Q Okay. So, let's go through them here.
What's the first one listed here?
A The first one is: His sins will be forgiven upon the first drop of his blood; i.e., he will see his place in Jannat.
In other words, by becoming martyred in Islam, martyred in the cause of Islam, any prior sins that you have engaged in will be immediately forgiven.
Q All right, and what's the second benefit listed?
A He will receive protection from the punishment of the grave.
In other words, he will avoid the hellfire of

damnation reserved to those who are disbelieves and who are sinful or who are not martyrs in Islam.
Q Okay. And the third?
A He will be in security from the great fear; i.e., the day of judgment.
The idea being, again, that when there is a day of judgment, that all sins will be forgiven and martyrs will be given an automatic free pass.
Q And four?
A A crown of honor will be placed upon his head, one ruby from this crown is better than the world and all it contains.
Q And five?
A He will marry 72 wives from the hur.
Q And what are the hur?
A The hur are the virgins of paradise. In the religion of Islam, according to the jurisprudence of Islam, there are virgins that inhabit paradise and those who are martyred in the cause of Islam, as gifts for their martyrdom, receive an immediate gift of 72 hoor al-ayn, or virgins of paradise.
Q Okay. And then, the next concerns interceding on behalf of 70 of his relatives.
What's the significance of that? What does that mean?
A That refers to the idea that a martyr in Islam will have permission to give his free pass to 70 members of his family.

So, say he has an uncle who has carried out terrible misdeeds, simply on the fact that this person is related to a martyr, they will be forgiven, they will have their sins forgiven and enter paradise as well no matter what they've done.

Q And the last is the fact that he will wear special clothes in paradise; correct?

A That's correct yes.

Q Now, very briefly --

MR. LOONAM: And Your Honor, we can take this down.

(Complies.)

Q Very briefly, what is Al-Qaeda?

A Al Qaeda, in Arabic moans the solid base or foundation. It is a terrorist organization that was founded on the Afghan-Pakistani border in September of 1988.

Q All right. And has Al Qaeda made any public pronouncements with respect to its view of the United States?

A It has, yes.

Q All right, can you very briefly tell us about that?

A Yes. In August of 1996, the leader of Al Qaeda, the founder of Al Qaeda, Sheikh Osama bin Laden released a fatwa or a religious edict in which he declared war against the United States.

He indicated that it was a religious duty upon Muslims to kill U.S. soldiers in the Arabian peninsula and in the Middle East because they had transgressed on the lands of the Prophet Mohammed.

Then, two years later, in February of 1998, bin Laden held a press conference in Afghanistan wherein he announced that he was expanding his fatwa, he was expanding his edict and henceforth, in the view of Al Qaeda, all Americans, civilian and military, regardless of where they were located, would be considered targets for Al Qaeda, its operatives and its allies.

Q And does Al Qaeda have an official media wing?

A Yes, it does.

Q What is that official media wing called?

A The official media wing of Al Qaeda's central leadership is known as as-Sahab, which means the clouds.

Q All right. And can you tell us what role as-Sahab plays with Al Qaeda's mission?

A Yes. Al Qaeda doesn't own a television station, it doesn't own a radio station, it has difficulty maintaining fixed websites, so the only way it can really get its message out is through video-recorded propaganda on the Internet.

As-Sahab is responsible for producing every single audio recording, video recording of Osama bin Laden that's ever been released, among other materials, including videos of operations in Afghanistan and Pakistan, speeches by other senior Al Qaeda leaders, testimonials by suicide bombings.

These video recordings are essential for Al Qaeda to number one, terrify its adversaries and, number two, to recruit others who might be sympathetic to this cause and to join in and join the movement.

Q Has as-Sahab released videos in connection with terrorist attacks?

A Yes, it has.

Q Can you list some of the major terrorist attacks it's released videos for?

MS. CARVLIN: Objection, Your Honor.

THE COURT: Sustained.

Q Are you aware of whether as-Sahab released videos in connection with the London bombing attack?

A It did, yes.

Q And how many videos did it release in connection with that attack?

A It released two videos that dealt squarely with the 7/7 bombing attacks in London.

Q Okay. And when was the first video released?

A The first video that as-Sahab released about the 7/7 bombing attacks was first aired, in excerpt, on Al Jazeera satellite television network in September of 2005. The entire unedited video was then released on the Internet three months later, in November 2005.

Q And what's the title of that video?

A The title is The Night of the London Operation -- The

Martyrdom Night of the London Operation.
Q And very briefly, what happens on that video?
A The video recording includes, primarily, video speeches given by two Al Qaeda leaders or two Al Qaeda leaders and operatives. The first person featured in the video is Dr. Ayman al-Zawahiri, who was the then-deputy commander of Al Qaeda.
The second person featured prominently in that video is an Al Qaeda operative by the name of Mohammed Siddique Khan, who allegedly was the mastermind or one of the masterminds behind the 7/7 bombing and one of the suicide bombers responsible for it.
Q And are you familiar with -- we'll discuss the other London video in one moment.
But are you familiar with whether al-Sahab released a video in connection with a bombing of a Danish Embassy?
A Yes, it did.
Q When was that video released?
A The video was released in September of 2008.
Q All right. And do you know the name of that video?
A Yes, I do.
Q What is it?
A The title of that video is The Word of the Word is the Sword.
Q Okay. And again, very briefly, what happens in that

video?

A That video features the final testimonial of a Saudi national by the name of Kamal al-Hadhli, who's also known as Abu Guharib al-Makki.

Al-Hadhli allegedly carried out the June 2008 suicide bombing attack on the Danish Embassy in Islamabad Pakistan. His final will or portions of his final will are played in the video along with, I believe, video of the actual attack.

Q All right. Are you familiar with the phrase: We love death as you love your life?

A Yes.

Q All right. What's the genesis of that phrase?

A The genesis of that expression comes from a letter that was written in the year 633 from the general-in-charge of the Muslim armies at the time. A individual by the name of Khalid bin al-Walid.

The letter was written from Khalid bin al-Walid to the emperor of Persia, the enemy of the Muslim armies, in order to try to intimidate his adversary, Khalid bin al-Walid wrote to him and said that you could never defeat us. You will never defeat us because whereas your soldiers love the good things about life, our soldiers are passionate about martyrdom, they love death.

Q And has that phrase been used by, you know, any prudent

persons you're familiar with since that time?
A In the last 20 years, approximately, it has been aggressively adopted by contemporary violent Jihadi extremists who have extrapolated that and have adopted the slogan as their own.
MR. LOONAM: Okay. Your Honor, if I could just show the witness Government's Exhibit 499.
(The above-referred to Exhibit was published to the witness.)
Q Do you recognize the words on Government's Exhibit 499?
A I do, yes.
Q All right. And is this one of the expressions that you were referring to?
A Yes. This is an excerpt from Osama bin Laden's August 1996 declaration of war and, as indicated, he basically states that it is impossible for the United States and its adversaries -- or its allies, excuse me -- to defeat the Muslims and he issues a message to the U.S. defense secretary saying --
Q One second. One moment, please.
A Sorry.
MR. LOONAM: Your Honor, the Government moves 499 into evidence at this time.
MS. CARVLIN: No objection, Your Honor.
THE COURT: Received.

(Government's Exhibit 499 was received in evidence.)

(The above-referred to Exhibit was published to the jury.)

Q All right, can you read Government's Exhibit 499.

A Of course.

"To liberate their sanctities is the greatest of issues concerning all Muslims; it is the duty of every Muslim in this world. I say to you, William, that these youths love death as you love life."

Q And when Osama Ben Laden was referring to William, who was he referring to?

A He was referring to U.S. Secretary of Defense William Perry.

Q And you testified that this came from the declaration of war against the United States?

A This came from the August 1996 declaration of war issued by Osama bin Laden.

Q All right.

MR. LOONAM: If I could just show the witness, Your Honor, Government's Exhibit 498.

(The above-referred to Exhibit was published to the witness.)

Q Do you recognize the words on Government's Exhibit 498?

A I do, yes.

Q Okay. And again, is this one of the instances you were talking about, the adoption of that phrase?

A It is, yes.

MR. LOONAM: Your Honor, the Government moves 498 into evidence.

MS. CARVLIN: No objection, Your Honor.

THE COURT: Received..

(Government's Exhibit 498 was received in evidence.)

(The above-referred to Exhibit was published to the jury.)

Q All right, can you read Government's Exhibit 498.

A "I did what I did because I love death and hate life and believe in God's promise to us and I did what I did so I could kill those who love live and hate death."

Q Okay, and who said that?

A Abdelaziz al-Omari a Saudi National.

Q And who is he?

MS. CARVLIN: Objection, Your Honor, objection.

THE COURT: Overruled.

A Abdelaziz al-Omari was one of the hijackers involved in the September 11th, 2001, attacks on the United States; particularly, he was on board American Airlines Flight 77.

Q All right. And what did American Airlines Flight 77 attack?

A The Pentagon.

MR. LOONAM: Now, Your Honor, I'd like to show the witness Government's Exhibit 497.

(The above-referred to Exhibit was published to the witness.)

Q Do you recognize Government's Exhibit 497?

A Yes.

Q Again, is this one of the instances you were talking about, the adoption of that phrase?

A It is, yes.

MR. LOONAM: Your Honor, the Government moves 497 into evidence.

MS. CARVLIN: No objection.

THE COURT: Received..

(Government's Exhibit 497 was received in evidence.)

(The above-referred to Exhibit was published to the jury.)

Q Can you read Government's Exhibit 497.

A "Thousands of young men eager to become martyrs who love death as you love life."

Q All right, and who's the author of that phrase there?

A The person who spoke these words is Sulaiman Abu Ghaith.

Q Who is?

A Sulaiman Abu Ghaith, at one time, was the number three man in Al Qaeda's leadership, around the time of the September 11th terrorist attacks in the United States. He was Al Qaeda's chief spokesman at the time.

Q And when did he make that statement?
A He made that statement in October of 2001, directly after the September 11th terrorist attacks on the United States.

MR. LOONAM: I will show the witness what is marked for identification as Government's Exhibit 496.

(The above-referred to Exhibit was published to the witness.)

Q Do you recognize Government's Exhibit 496?
A I do, yes.
Q And again is this one of the instances you were talking about, of that phrase being adopted?
A It is yes.

MR. LOONAM: The Government offers 496, Your Honor.

MS. CARVLIN: No objection.

THE COURT: Received.

(Government's Exhibit 496 was received in evidence.)

(The above-referred to Exhibit was published to the jury.)

Q Can you read this to the Members of the Jury, please.
A Yes.

"A response to the crimes that you have caused in this world, and specifically in Iraq and Afghanistan, and there will be more, if God wills it. You love life and we love death, which gives an example of what the Prophet Mohammad said. If you don't stop your injustices, more and more blood will flow and these attacks will seem very small compared to what can occur in what you call terrorism."

Q All right, and who was Abu Dujan al-Afghani?

A Abu Dujan al-Afghani is an unidentified individual featured in a video recording that was delivered to Spanish media outlets shortly after the March 11th, 2004, terrorist attacks in Spain, claiming credit for those attacks on behalf of Al Qaeda.

Q And what was attacked in Spain?

MS. CARVLIN: Objection.

THE COURT: Sustained.

MR. LOONAM: Your Honor, if I could show the witness Government's Exhibit 494.

(The above-referred to Exhibit was published to the witness.)

Q And do you recognize the words depicted on 494, marked for identification?

A I do yes.

Q And is this one of the instances you were talking about, of that phrase being used?

A Yes.

MR. LOONAM: The Government moves 494 into evidence.

MS. CARVLIN: No objection.

THE COURT: Received.

(Government's Exhibit 494 was received in evidence.)

Q Can you read these words to the jury.
A Yes.
""To the American people": Rejoice for what is coming to you, we will come to you with slaughter and we have prepared men who love death as you love life."
Q And when was this statement released and in connections with what?
A It was part of an Arabic language statement issued on December 27th, 2009, issued by a group calling itself Al Qaeda in the Arabian Peninsula. It is a franchise, an official franchise organization of Al Qaeda based in Yemen.
This is part of a statement issued claiming responsibility for a failed bombing attack on a U.S. airliner en route from Amsterdam to Detroit, Michigan.
MR. LOONAM: And just for the witness, Your Honor.
(The above-referred to Exhibit was published to the witness.)
MR. LOONAM: I'm showing the witness what has been marked as Government's Exhibit 495.
Q Do you see the words on Government's Exhibit 495 and do you recognize them?
A I do, yes.
Q And again, is this an instance of that phrase being adopted?
A It is, yes.

MR. LOONAM: All right, the Government moves 495 into evidence.

MS. CARVLIN: No objection.

THE COURT: Received.

(Government's Exhibit 495 was received in evidence.)

(The above-referred to Exhibit was published to the jury.)

A "What you have witnessed now is only the beginning of a string of attacks that will continue and become stronger... We are 100% committed to the cause of Islam. We love death the way you love life."

Q All right. Where does this statement appear?

A This statement appeared in a video recording which was released by Al Qaeda's as-Sahab media wing in July of 2006.

Q All right. And what was that video of or for?

A The video recording was the official video recording featuring the quote, unquote "martyrdom will" of another individual involved in carrying out bombing attacks in London on July 7th, 2005, an individual by the name of Shehzad Tanweer.

Q Is that the other London tack video that the referenced before?

A That's correct. That's the second video. There were two videos released by Al Qaeda as-Sahab media about the July 7, 2005, terrorist attacks in London. This is number two.

MR. LOONAM: One moment, Your Honor.

(Pause in the proceedings.)

MR. LOONAM: No further questions, Your Honor.

THE COURT: Thank you, Mr. Loonam.

MS. CARVLIN: May I enquire?

THE COURT: Yes Ms. Carvlin, go right ahead.

CROSS-EXAMINATION

BY MS. CARVLIN:

Q Mr. Kohlmann, would it be fair to say that you're basically on the Government's side in this case; is that right?

A That's not the way I view it.

Q Okay. When you're testifying supposedly as an expert witness, you're not rooting for the Government to win?

A When I work as an expert witness I provide objective analysis. I mean, I represent a lot of different people and I work for a lot of different --

THE COURT: Just listen to the question. Answer the question.

THE WITNESS: Sorry.

Q Are you rooting for the Government to win?

A No, I don't.

Q Now, I think you testified on direct examination that you have been an expert witness for the Government 22 times?

A That's correct, yes.

Q That's the U.S. Government?
A That's correct, yes.
Q In addition to the U.S. Government, you've testified eleven times overseas; is that right?
A That is correct, yes.
Q Now, one of those cases in which you testified was United States versus Muntasser?
A Muntasser, yes.
Q Okay. And that was in the District of Massachusetts; is that correct?
A That is correct, yes.
Q It was a Federal prosecution?
A That's correct, yes.
Q And the defendants were accused of providing some sort of financial support to a terrorist organization; is that right?
A Actually, I think they were accused of tax fraud, but it's possible you're correct. I'm not particularly familiar with the charges in that case.
Q But you did comment on the case; did you not, in a blog called Counter-Terrorism Blog?
A I don't recall offhand, but it's certainly possible, yes.
Q That was a blog run by Steve Emerson; is that correct?
A No, that's not correct.
Q Steve Emerson began that blog; is that right?
A No, that's not correct.

Q But you have posted on that blog; is that right?
A I have in the past, yes. It's defunct now, it's been defunct for several yourself, but I have in the past, yes.
MS. CARVLIN: May I show to the witness, Judge.
THE COURT: Yes.
(The above-referred to Exhibit was published to the witness.)
THE COURT: Is there a question pending?
MS. CARVLIN: Yes, sorry.
Q Do you recall whether you commented on the Muntasser case on that blog?
A I believe, at least based on this Exhibit, I believe I did, yes.
Q And isn't it true that what you said there was that the case, which was the convictions, could only be described as a major victory for the U.S. Government; is that right?
A I did say that, yes.
Q And as a matter of fact, you've commented on this very case in the press; have you not?
A Not this particular defendant, I don't believe, no.
Q But this case; is that right?
A Other defendants in this case, I believe that's a fair -- it's a fair assessment, yes.
Q As a matter of fact, you were interviewed for an article about yourself in New York Magazine; were you not, in 2010?

A That's correct, yes.
Q Okay. And the author of that article was Wesley Yang; is that right?
A Yes.
Q And you work with Mr. Yang; is that right?
A No, that's not correct.
Q Well, you gave Mr. Yang several interviews; correct; is that right?
A I gave him one interview.
Q And you allowed him to come to your office, which is also your home; is that correct?
A Well it's not my home anymore I have a separate office now, but at the time I did allow him to come there, yes.
Q Okay. And during one of those -- during that interview, didn't you tell him that Najibullah Zazi was -- excuse me, Najibullah Zazi was trying to pull off some kind of bomb plot involving nail polish remover?
A I believe I used the word allegedly but I did mention that, yes.
Q And that word allegedly is not in that article; is that right?
A I don't have the article in front of me. But if I neglected to say allegedly, then it was allegedly.
Q Do you recall whether the word allegedly is in the article?

A I don't recall offhand.

MS. CARVLIN: May I show it to the witness, Your Honor.

THE COURT: Yes.

(The above-referred to Exhibit was published to the witness.)

Q The area that's highlighted if you could just refer to that.

Did you say allegedly in that quote?

A Well, that's not the complete, that's, that's, that's not the complete text of what I told to Mr. Yang that's only an excerpt of it. That's only an excerpt.

Q In the one line that I referred to, are you contending that the reporter removed the world allegedly?

A No. I'm contending that he didn't include everything I said. I spoke to him for a long period of time in one sitting. This is only an excerpt. But again, regardless of whether he used it or not, I should have used the wold allegedly. If I did not, I should have.

Q And you commented on this case in that article; is that right?

A I don't believe your, the defendant sitting in this case --

Q I didn't ask you that, Mr. Kohlmann.

I asked you whether you commented on this case.

THE COURT: It's a little ambiguous.

MS. CARVLIN: Withdrawn, Your Honor.

THE COURT: Just rephrase.

MS. CARVLIN: I'll rephrase.

THE COURT: Please.

Q You reviewed FBI 302s related to this case; did you not?

A That's correct, yes.

Q And as a result of reviewing those FBI 302s, you are aware that Najibullah Zazi is alleged to be a co-conspirator with my client; is that true?

A That's correct, yes.

Q So, commenting on Najibullah Zazi's case is commenting on this case is it not, Mr. Kohlmann?

A I think it depends on your definition of what the limitations of this case are. I mean, I don't -- in some cases it's separate. I don't really know.

Q Mr. Kohlmann, you're a senior investigator with the NEFA foundation; is that right?

A I'm a consultant to NEFA that's correct, yes.

Q And it's the Nine Eleven Finding Answers foundation; is that right?

A That's correct, yes.

Q And you've been affiliated with that group for some time haven't you been?

A I've done consulting work for them since 2005. I haven't

done work for them in about the last year, but before that, it was, I would say I did about six years of work, yeah.
Q Okay. And at one time, you did -- you were working there about 20 hours a week; isn't that correct?
A Well, I wasn't working there, I was doing work on their behalf, 20 hours a week, up to 20 hours a week.
Q And NEFA describes its mission as helping to prevent future tragedies in the United States and abroad by exposing those responsible for planning, funding and executing terrorist activities; isn't that correct?
A That is correct, yes.
Q So, you would agree that the NEFA foundation considers itself to be a partisan foundation; is that right?
A I don't know if they would describe themselves, in fact, I doubt they would describe themselves as a partisan foundation.
Q Well, doesn't NEFA also claim to play a role in the fight against terrorism through cohesive and comprehensive efforts to research, analyze and disseminate information pertaining to past and current terrorist activities?
A They do correct.
Q And NEFA's position is that its staff members are fulfilling a critically important role in gathering useful information invaluable in the fight against terrorism; is that right?

A That's definitely correct yes.
Q And you're listed on NEFA's website as a senior investigator; is that correct?
A That's correct.
Q And right below that there's a biography of you on their website; is that right?
A That's correct.
Q And part of that biography lists every case in which you have testified for the United States Government; is that right?
A That's correct, yes.
Q And that includes a case that you testified for the United States Government in 2012; isn't that right?
A I, I haven't looked at the NEFA website in over a year. I couldn't tell you.
MS. CARVLIN: If a may show what's marked as Exhibit M, Your Honor.
THE COURT: Yes, go ahead.
(The above-referred to Exhibit was published to the witness.)
Q Can you see that? Do I have that positioned correctly?
A Yes, you do.
Q The part that's highlighted, that is a case from 2012; is that right?
A Yes, correct.

Q And that's from the Southern District of New York; correct?

A That's correct, yes.

Q And you testified in that case; is that right?

A I did, yes.

Q And you provided information to NEFA that allowed them to put that on their website; is that correct?

A No, that's not correct.

Q Did somebody operating on your behalf provide them with that information?

A Not to my knowledge, no.

Q Do you have any idea how NEFA knows all 22 of the cases that you've testified?

A The previous case -- well, some of the previous cases I believe they know because I told them. In that particular case, in the case of the Nayyar case, which was the last one, my best guess would be that they managed to get the information off of PACER, but I have not given them that information. No one I know has, to my knowledge has given them that information. So, I couldn't tell you where they got that from.

Q That information is also on your own website; is it not?

A That's correct, it is.

Q Now, I think you mentioned on your direct examination amounts of money that you've made testifying on behalf of the

Government; is that right?
A That's correct, yes.
Q And it's true that you started this work when you were a very young man?
A I was relatively young, yes.
Q In college?
A I wasn't testifying as an expert during college.
Q You started --
MS. CARVLIN: Let me rephrase.
Q You started working on issues related to terrorism when you were in college?
A That is correct, yes.
Q All right. And you first worked for The Executive Project; is that right?
A That's correct.
Q And after college, you've only done this type of work; is that right?
A What do you mean only this type, you mean counter-terrorism work?
Q I mean the only way that you've made your living in your life is by providing information to the Government, reviewing documents and archives and other evidence provided to you by the Government, by doing consulting work with respect to terrorism. Everything is related to your supposed expertise in terrorism; is that right?

A What you just said is mostly correct except for the part about the Government. Most of my money does not come from the U.S. Government.
Q You do get a fee, though, when you testify?
A Definitely.
Q For the Government?
A Yes, that's true.
Q And you testify for a fee, you're not testifying for free today.
A No, I do get paid for my testimony, that's correct.
Q Okay. And as a matter of fact, since you started testifying for the Government eight years ago your fee has increased rather substantially, hasn't it?
A Honestly, it varies from case to case. It doesn't go up like this. It varies anywhere from approximately 325 to $400 an hour, depending on the case, depending on the work involved.
Q And on this case you're getting paid $400 an hour; is that right?
A I believe that's correct, yes.
Q And you testified in a case again in the Southern District of New York and this is called, named, entitled United States versus Paracha.
Do you recall that case?
A I do, yes.

Q And that was in the year 2005; is that right?
A That's correct, yes.
Q And your fee on that case in 2005 was $150 an hour; is that right?
A I don't recall but if you said so, that's certainly possible, yeah.
MS. CARVLIN: Judge, may I show the witness what's been marked for identification as Defendant's Exhibit D.
THE COURT: Yes, it's in front of him.
(The above-referred to Exhibit was published to the witness.)
Q And isn't it correct that you were paid $150 an hour in that case?
A According to this testimony, yeah, that's correct.
Q And that's your testimony isn't it?
A I believe so, yes.
Q And it was accurate when you gave the testimony?
A Again, I don't recall exactly how much I got paid so I can't say whether -- I'm assuming it was accurate but I have to look back in my records to find that out.
Q You're not testifying the testimony you gave in that case was inaccurate?
A No, I honestly don't remember.
Q But in that case you're getting paid $400 an hour?
A That is my standard fee at the present time, that's

correct, yeah.
Q And I believe you worked on a case for the U.S. Government last year in 2011 called United States versus Kasiu?
A Kasiu, yes.
Q Is that right?
A That's correct yes.
Q And would it be fair to say that for your work on this case, for the Government, you billed $42,445?
A That sounds about right, but I'd have to take a look at the invoices to know.

MS. CARVLIN: Your Honor, may I show the witness what's been marked for identification 3500-EK-8.

THE COURT: Yes.

(The above-referred to Exhibit was published to the witness.)

Q Would you look at the highlighted portion please?
A Yes.
Q Is it accurate that you billed the Government $42,445 for your work in that case?
A No, it's not. Not based on this document.
Q This is an invoice, is it not, for $42,445?
A No, this doesn't appear to be an invoice.
Q You did bill the Government approximately $40,000 for that case; did you not?

A I honestly don't know offhand how much I billed in that one case. But that was not an invoice for my services. That's a contract.

THE COURT: She's just asking you what you billed in the case.

THE WITNESS: Sorry, Your Honor.

Q In this case so far you've billed $90,000; is that right?

A I'm sorry, how much?

Q $19,000?

A That's correct, yes.

Q $19,600; is that right?

A That sounds about right, yes.

Q And you expect to make more than that on this case; is that right?

A Well, I haven't billed the hours for court time so, assuming I will get paid something more, but I haven't drawn up an invoice or anything, so I don't know how much.

Q Well, you submitted one invoice to the Government haven't you?

A That's correct, yes.

Q And that's the first of your invoices. You characterize that as a first invoice; did you not?

A Yeah, I don't expect to submit more than two.

Q Now, you made a videotape for the Government; did you not, that was submitted in a prosecution in Guantanamo Bay; is

that right?
A I did, yes.
Q And you charged the Government $20,000 to make that video; is that right?
A To produce that video, yes, I did.
Q Okay. Now, do you recall sitting here today, approximately how much you billed the Government in the case we just discussed, Kasiu?
A I honestly, I'd have to take a look. I issued, I think, three invoices I want to say and I do not recall off the top of my head the exact number. I would say the estimate of between 30 and 40,000 is approximately accurate but I would have to take a look at my invoices to give you an exact number.
MS. CARVLIN: May I show the witness, Your Honor, what's been marked for identification Defendant's Exhibit T, please.
THE COURT: Yes, you may.
(The above-referred to Exhibit was published to the witness.)
Q And if you would review the part please that's been highlighted, Mr. Kohlmann.
A Yes.
Q And does that refresh your recollection as to how much you billed the Government this that case?

A Well, that's actually I think the same thing I just said. It's somewhere between 30 and $40,000. I just don't know the exact number off the top of my head.
Q Is it somewhere between 35 and $40,000?
A I'm just guessing at this point. I would need to take a look at the invoices. According to authorize it's between 35 and 40 but that was an estimate as well. To be safe I think it's somewhere between 30 and 40, probably 35 and 40, but either way only way I can know for certain is to look at the invoice.
Q Well, in that case you testified under oath; did you not?
A It's true.
Q And you were asked how much you were being paid for that case, were you not?
A Yes.
Q And the question was posed to you, was it not?
"QUESTION: Approximately have you he earned for the work that you you've done in connection with this case?
"ANSWER: I believe thus far I've earned after approximately 35 or $40,000."
Q Were you asked that question and did you give that answer?
A I did.
Q Now, you also testified for the Government in a case US versus Amawi; is that right?

A Yes.
Q And that was the Northern District of Ohio in 2008?
A That's correct, yes.
Q And is it fair to say that you got paid for your work in the Government in that case $49,000?
A I honestly, I don't recall. I don't know the invoices off the top of my head.

MS. CARVLIN: If I may, Your Honor, show the witness what's been marked for identification Defendant's Exhibit U.

THE COURT: Yes.

(The above-referred to Exhibit was published to the witness.)

Q Would you please look at the portion that's been highlighted.

Does that refresh yours recollection that you billed the Government approximately $49,000?
A According to this testimony that's accurate, yes.
Q Mr. Kohlmann, that's your testimony; correct?
A That's correct, yes.
Q And it was accurate testimony; is that correct?
A That's correct.
Q Now, I want to talk to you, you gave some numbers today about the amount of money that you have made over the last ten years working for the FBI and the U.S. Attorney's Office. I would like to go through that with you and I'm going to direct

your attention solely to the years 2006, 2007, 2008, 2009 and 2010. So, we're doing five years not ten years.
A Okay.
Q Now, isn't it true that during that five-year-period you were paid by the FBI and the Department of Justice, the United States Attorney's Offices around the country between 516 and $520,000?
A I don't believe that's accurate, no.
Q You testified in a case fairly recently, U.S. versus may Mehanna?
A Mehanna, that's correct, yes.
Q And that was in the District of Massachusetts; correct?
A That's correct.
Q That was in December 2011, wasn't it?
A That's correct, yes.
Q And you were asked, were you not, to tell what you had made for those five years; correct?
A I believe it went back to 2004, that was my recollection. I was asked to give figures from 2004 to 2011. So, that would include 2011.
Q Do you recall whether you included 2004 or whether it started with 2006?
A I really, I don't know.
MS. CARVLIN: Judge, may I show the witness, please.
THE COURT: Yes, you may.

MS. CARVLIN: What's been marked for identification Defendant's Exhibit V.

(The above-referred to Exhibit was published to the witness.)

Q And I'm directing your attention to what's highlighted please and the four lines before that.

Having looked at that, does that refresh your recollection that you provided the $516,000 figure for the five-year-period from 2006 through 2010?

A I'm sorry you're correct. I thought that included 2005 and 2011. That is for that five-year-period, yeah.

Q And during that five-year-period, you were paid an additional $50,000 by the FBI; is that right?

A No. The $50,000 was paid to me between the years of 2002 and 2011.

Q In Mehanna, were you asked this question Mr. Kohlmann and give gave this answer?

"QUESTION: All right. And during those same five years, how much have you been paid by the FBI?

"ANSWER: That would be approximately $50,000."

Q Were you asked that question and did you give that answer?

A If I did, I believe it's an error. I believe that money was paid to me between the years of 2003 and 2011.

Q During those same five-year-period, 2006, 2007, 2008, 2009, 2010, how much were you paid by foreign Government force assisting them in their terrorism cases?

A I don't know off the top of my head.

Q Would --

MS. CARVLIN: Judge, can I please show the witness what's been marked for identification again, Defendant's Exhibit V.

THE COURT: Yes.

(The above-referred to Exhibit was published to the witness.)

Q And I would draw your attention to the highlighted portion at the top of the page.

Does that refresh your recollection of the amount you got paid for those five years by foreign Governments?

A I believe it does.

Q And how much was that?

A Approximately $390,000.

Q All right. Now, that 390,000 and the 400,000 thousand approximately, the 900,000, that was not at all the total amount of income you made on terrorism-related testimony and activities; is that right?

A Terrorism activities? You mean...

Q Let me rephrase that.

Your consulting work with respect to terrorism.

A No, no, it does not.

Q And would it be fair to say that that $900,000 figure may be approximately 40 percent of what you made for that time period?
A Over the five or six years? Yeah, probably.
Q Okay. So, doing the math there, during that five-year-period, you made approximately $2.2 million, would that be correct?
A I don't think it was quite that high. I think it's under $2 million.
Q But it would be close to $2 million?
A I don't really know. I would have to take a look at my paperwork. I don't know off manned.
Q Okay. But you do recall that the numbers you've given, the $900,000 figure, was about 40 percent of your income for that period; is that right?
A Roughly. Again, I'm speaking off the top of my head. I have to take a look at the paperwork to me.
Q Well, you were asked those questions, were you not, in Mehanna?
A That's correct, I was asked those questions.
Q And you gave that answer; did you not, 40 percent?
A Well, I had paperwork in front of me which had the numbers on it. So, I wasn't -- they were asking me to tabulate numbers that were in front of me they weren't asking me to come one these figures off the top of my head.

Q Well the question I asked is you testified in Mehanna did you not that the numbers we just talked about were approximately 40 percent of the money that you made for international terrorism consulting and testifying and related activities?

A I believe so, but again, I'd have to see the transcript to be a hundred percent sure.

MS. CARVLIN: Your Honor.

THE COURT: Yes.

MS. CARVLIN: May I show again the witness what's been marked as Defendant's Exhibit V again the highlighted portion please.

(The above-referred to Exhibit was published to the witness.)

Q Does that refresh yours recollection, Mr. Kohlmann?

A I said, around 40 percent. Again it's approximately but I would have to take a look at the numbers to be a hundred percent sure.

Q But it's around 40 percent?

A I think so, yeah.

Q Now, you make income in by working as a consultant for MSNBC and NBC news; is that right?

A That's correct, yes.

Q And you provide them with videos and electronic information such as you provide to the Government; is that

right?
A That's correct, yes.
Q And what do you get paid for doing that?
MR. LOONAM: Objection.
THE COURT: No, I'll allow it.
A I get paid on a -- I'm on a consulting basis. I get paid money regardless of whether I provide work or no. I get, I have a two-year contract or three year contract with NBC.
Q And what is your annual figure on the contract?
A Well, it's varied over time.
Q What is it now?
A Presently I get paid, I believe, $85,000 a year.
Q And is that dependant on the number of appearances or that's a set fee?
A No that's a set fee.
Q And are you paid for you work that you did for -- were you paid for paid for the work that you did for NEFA?
A I was paid during a particular period of time, yes.
Q Okay. And you also make money giving speaking -- doing speaking engagements; is that correct?
A Occasion low, yes.
Q And would it be fair to say that you do speaking engagements two to three times a month on average?
A It varies. I haven't done a speaking -- well. I did a speaking engagement a month-and-a-half ago. It can vary

anywhere from once every three months to three times a month. It just depends. There's no regular schedule for that kind of stuff.

Q Okay. And do you have a set fee for your speaking engagements?

A No, it varied. It varies. I'm giving a presentation next month and getting approximately $800 for it. Sometimes I get paid more, sometimes it goes up to two thousand. Just depends on how long the presentation is, who the party is putting on the presentation, how far away it is, things like that.

Q Do you have an agent, Mr. Kohlmann?

A No.

Q An agent for your book?

A No.

Q You didn't have an agent who negotiated your contract with NBC?

A I have a lawyer who helped negotiate my contract at NBC but he's not an agent.

Q And did your lawyer help you negotiate your contracts with the Government for your fee in testifying?

A No.

Q But you did negotiate that fee; is that correct?

A Yeah, usually. Usually it's a negotiated fee, yeah.

Q Now, would it be fair to say that you used the information that you obtained from your involvement in cases in which you work as an expert for the Government to promote your business of consulting?

A I wouldn't say we promote, but certainly, I think my work with the Federal Government is fairly well-known.

Q And you have a website do you not?

A I do, yes.

Q And you mentioned on direct examination some of the purposes of the website; correct?

A I believe I did, yes.

Q To disseminate information to the public?

A That is one pursuant, yes.

Q And isn't it accurate to say that another purpose is to toys your services; right?

A I believe I said that on direct but yes, that's correct, yes.

Q Okay. And isn't it also true that on your website you mention prominently the work you do for the Government; correct?

A I, that's correct, we do mention the fact we do work for Governments, that's correct, yes.

Q And you use that as an advertising point; right?

A It is, I guess, a credentials I guess you could say. I don't know.

Q Well, does it help you, are you using it to solicit other

business? That's the question?
A It depends on the context. If I'm working with academia, academia doesn't necessarily look upon that as something that's relevant to them. But if, I mean, in discussing with people potential expert witness work the fact that you've done expert witness work before is definitely an indicator that you're capable of doing it again.
Q And in fact, on your website, isn't it true that you talk about your ability to provide successful resolution of cases; is that right?
A That's well I don't know if he use that language. I don't exactly -- that website was drawn up a while ago and I'm not sure what the language is exactly. That doesn't sound like the language that's on there.
Q Well, when -- do you have control of the content of your own website?
A Theoretically, I guess I could, but I don't on an actual basis, no.
Q You have someone else who updates your website; is that correct?
A Well, I have employees and a company. I don't, I don't, I don't micromanage those kinds of things.
Q Okay. But you're familiar with the content of this website that's advertising your consulting services?
A Generally speaking, yes, yes.

Q And you note on the website, do you not, that your proffered consulting services include expert witness testimony in civil and criminal cases?
A That's correct.
Q And, in fact, on your own website you link to reports you've previously provided as an expert. Expert reports you've previously drafted for the Government; is that right?
A I believe that's true, yes.
Q So, would it be fair to say that your work as an expert witness supports the other $111,000 that you've made, a million one that you make in addition to the 900,000?
A I'm sorry, I didn't under the question. Can you repeat.
Q Sure. You testified that you make approximately $900,000 over the last five-year-period testifying, providing expert reports for the Government.
My question is: Your work for the Government as an expert also supports the other work that you do?
A Generally speaking, actually, no. Generally speaking, we keep the work that we do for individual clients completely separate and distinct. Because of the fact that we rely only on open source information for the most part in terms of drawing up our expert reports, the only exception to that would be if there's a piece of evidence that is released openly, publicly, in which case it's not, it's not proprietary belongs to us, we might cite to it. But again, generally

speaking, we try to keep those separate.
Q But you use, as part of your advertising on your website, the fact that you testify as an expert witness for the United States Government; correct?
A I, depends on what context you mean but I guess possibly.
Q Are you unsure about that?
A Well, we don't specifically advertise. We don't specifically come out and offer rates and say hire us. We just suggest we've done this work in the past wand and we're willing to do it in the future.
Q Mr. Kohlmann, didn't you agree with me a few minutes ago that one of the purposes of your website is to advertise and promote your private consulting work?
A That's correct, yes.
Q And on your website in promoting your consulting work you mention the fact that the testify on behalf of the U.S. Government; correct.
A That's correct, yes.
Q And you list 22 of the 22 cases in which you have testified; is that correct?
A That is correct, yes.
Q Now, would it be fair to say that over the eight years you've been testifying as an expert witness on behalf of the Government, you've testified on a variety of different Jihad-type groups; is that right?

A I think I've testified on a variety of groups period, but yes.
Q And is it accurate that Al Qaeda, over the last several years, has become more decentralized than it was previously?
A That's true, yes.
Q And Al Qaeda now has a number of what you would characterize perhaps as affiliates would it be fair to say fair it say?
A Affiliates or franchises, yes.
Q Okay. And different countries might have an Al-Queda affiliate or franchise?
A That's correct, yes.
Q And those groups are very similar in several respects; right?
A I think very similar are not the description I would come up with. They have similarities between them. They have parallels. But very similar is not necessarily the words I would use.
Q And they are, let me see if I can be more precise?
A Mm-hmm.
Q They are modelled on Al Qaeda; is that right?
A They're not just modelled on Al Qaeda but they are modelled on Al Qaeda.
Q And part of the reason that they're franchised or they're affiliates is they want the Al Qaeda brand; right?

A Well, the people that found these run these organizations themselves are already Al Qaeda but yes, they would like it continue operating under the name Al Qaeda.

Q So, some of the people who have founded these affiliates were originally members of Al Qaeda is that what you're saying?

A Most of them were either members or if not members then very close affiliates already yes.

Q So, the groups would share some similarities with respect to ideology; is that right?

A In the big picture, yes.

Q And they might all share similarities with respect to training, for example?

A Again, in the big picture. But there's, there's just certain aspects that are particular countries. I mean, if a group is located in the mountains their training regimen is probably going to be different than a group training in the desert.

Q Now, you talked with the Government about your qualifications to be an expert?

You don't have a Ph.D.; is that right?

A That's correct, I don't have a Ph.D.

Q And you don't have a graduate degree related to terrorism; is that right?

A Well, I consider a JD related to terrorism, but if you

consider a non-JD degree no, I don't have one.
Q Is everyone who's a lawyer a terrorist expert?
A No, definitely not.
Q You don't speak Arabic, do you?
A I speak some Arabic. I don't speak it fluently.
Q Okay. And have you traveled extensively in the Middle East?
A I've been to, yeah. I've been to the Saudi Arabia, Jordan, I spent a lot of time in Bosnia and Herzegovina, Indonesia.
Q The Middle East, I was asking.
A Okay, then Saudi Arabia, Gutta, Jordan.
Q Okay. And when you were in Saudi Arabia, Gutta and Jordan, you were there for conferences; isn't that right?
A Either conferences or consultations with local Government officials, yeah.
Q Okay. And what's the longest continuous period you've spent in Gutta, for example?
A I don't know. Probably between three days and a week.
Q Okay. And the same question with respect to Jordan. What's the longest continuous period you've been in gag order Dan?
A A week.
Q And how about Saudi Arabia?
A A week.

Q Okay. And when you go to those countries for conferences you're getting paid, aren't you?
A No.
MS. CARVLIN: One minute please, Your Honor.
THE COURT: Yes.
(Pause in the proceedings.)
Q Now, have you ever been in the armed services?
A No, no, I've never served in the military.
Q You've consulted with a number of United States age sees, Department of Justice?
A That's correct a number of U.S. Government agencies.
Q Department of Defense?
A That's correct, yes.
Q But you have not held a formal position with the FBI; is that correct?
A No, that's correct, I have not.
Q Or with the Department of Defense?
A I have never served in the military.
Q Was NSA?
A The national security administration.
Q And what is the age?
A Age see sorry.
The NSA is charged with surveilling electronic signals. Signal interception, basically doing electronic interference, surveillance.

Q Okay. You have never held any affiliation with the NSA; is that right?
A No, I've never worked in an official position with any Government agency.
Q Do you have a security clearance?
A No, I do not.
Q Would it be fair to say.
Would it be fair to say that your work would be infans ifs you had a security clearance?
A No, it not necessarily would be, no.
Q Well, people with security clearance have access, for example, to wire information obtained via wire-tap, would that be correct?
A They can have access to that information, that's correct.
Q And they can have access to information obtained by satellite that are, you know, orbiting over middle eastern countries or other countries?
A Well, they can. Yeah.
Q And it was a United States intelligence agency that located Osama bin Laden; is that right?
A I think that's a little bit more complicated than that. But I think U.S. intelligence agencies definitely played a role in it, yes.
Q And they did that in part for the use of classified information; is that right?

A In part, but not entirely actually, no.
Q But you don't think it would be useful to you to have those same resources?
A I know it wouldn't be useful to me.
Q You think that your resources are superior to those of the United States intelligence agencies?
A They can be occasionally, but that's not what the problem is.
Q Now, I think you said you're a social scientist; is that right?
A That's correct, yes.
Q Do you belong to any of the groups that social scientists belong to? The American Association of Socialists?
A No, I don't.
Q The American Society of Criminologists?
A I don't belong to that either.
Q The American Sociological Association?
A I don't belong to that either.
THE COURT: How long is that list you've got there?
MS. CARVLIN: That's it. That was it, Judge.
Q Is it true that social science, like other types of sciences, follow certain methodology; is that right?
A Yes. Not always one methodology but yes, there are methodologies when it comes to social science, yes.
Q And one of the characteristics of any kind of science is

the ability to repeat the results and get the same answer; is that right?
A That's true, yes.
Q You have protocols that you follow in a science?
A It depends what methodology you're dealing with. The most important thing when it comes to social sciences is indicia of reliability.
Q One of the ways of measuring whether a social science or any science is reliable is its remember error rate; is that correct?
A It can be if you're doing a mathematical analysis. If you're doing a numerical analysis.
If you're doing a non-numerical analysis then error rates become less significant.
Q Have you taken a course in statistics?
A No, because I don't generally speak and do numerical analysis. I focus mostly on --
THE COURT: So, the answer's no.
THE WITNESS: Excuse me, Your Honor.
A That's correct, the answer is no.
Q Is there an error rate for your work?
A Again I don't engage in mathematical analysis that would require that kind of --
Q Is there an error rate for your work?
A Again, it's not applicable.

Q Is there one?
A That is not applicable for the kind of research or kind of comparison that we do. Compare and contrast, there is no such thing as an error rate.
Q So, we have no idea how accurate your type of social science is?
A No, you do.
Q Okay. There are errors that are made by people in your field; is that correct?
A Correct.
Q You work with Steve Emerson I think you mentioned before?
A Not in the last ten years, no.
Q But you did work with him?
A A long time ago, that's correct.
Q A long time; isn't that true?
A I worked for him for four years. About five years, five years.
Q 1998 to 2003; is that correct?
A That's correct, yes.
Q Okay. Mr. Emerson claimed that the 1995 Oklahoma City bombing had Middle-Eastern traits; is that right?
A Not while I was working there.
Q That wasn't my question, sir.
Are you aware that he claimed that?
A I'm aware of something along those lines but again that

occurred when I wasn't working there.
Q And you know that that was wrong; correct?
A Do I know that the Oklahoma City bombing was not carried out by individuals with Middle-Eastern traits? Yes, I know that.
Q Now that compare and contrast essentially means that if you find pieces of information on multiple sources that agree, that that means that something is correct; is that right?
A If there are indicia of reliability, yes.
Q Well, certainly not everything that's said on the Internet is accurate you would agree with that?
A A agree 100 percent.
Q And as a matter of fact, you, yourself have put out inaccurate information opt international; isn't that correct?
A I suppose test possible. I can't think of a particular example off happened but it's possible.
Q You've used pseudonyms; is that right?
A For myself?
Q Yes.
A You mean I've written under pseudonyms?
Q In posting something, in sending inquiries, you have used a name that's not your name, you've used a pseudonym?
A Oh, you mean in terms of sending information to a terrorist organization?
Q Yes.

A Yes, that's correct, yes.
Q Now, we went over on your direct exam a number of videos and you would agree, wouldn't you, that there is nothing inherently violent about Islam, is that right?
A I would agree 100 percent.
Q And you'd last agree that supporting Islam is not the same as supporting Al Qaeda.
A Not in the least.
Q You've noted that every or several of the suicide bombers in these attack that is we looked at in the Government Exhibits used words: We love death more than you love life or something similar to that; is that right?
A That's correct, yes.
Q First of all, you don't have any idea if Mr. Medunjanin viewed any videos, what he may or may not have seen; is that right?
A I only know the evidence that's been shown to me in the case and the evidence that was shown to me in this case -- I'm definitely not asking you to comment on information you received outside of the Court.
Q I'm asking whether you have personal knowledge of what videotapes. Not something that was repeated to you that Mr. Medunjanin did or didn't view.
A Again, the only information I have is the information that has been given to me in the context of this Court. I

have not attempted to investigate any information. If it wasn't provided to me then I'm not familiar with it.
Q And you also have not desktop studies on the number of Muslim men, young Muslim membership, who are assimilated Americans who do or don't watch Jihadi videos; is that correct?
A I'm actually engaged in one right now but I have not finished it yet.
Q So, you don't know if one in two people who sees that kind of videos has some sort of instincts towards terrorism or one in two million?
A I don't think there's any statistical way of necessarily predicting that.
Q Well, you could, could you not as a social scientist, do a study of young Muslim men; take two thousand Muslim men, interview them, ask them how many of you have seen these videos, how many of you have these different opinions? You could do that; correct?
A You could. In my opinion, as a social scientist it wouldn't be productive but you could do that.
Q A lot of these videos, including Constance on the Path of Jihad, are available ton the video, are they no?
A Some of them are that's correct yeah.
Q I could go to YouTube right now and see many of these videos?

A I'd have to do a YouTube search for each one of them but I am aware that at least some of them are available on YouTube; correct.

Q And you're not suggesting that anyone who accesses one of these videos on YouTube is a terrorist; is that right?

A I don't believe that's the case, no.

Q So, is it fair to say that the mere possession or viewing of tapes like these doesn't really tell you anything; is that right?

A Well, I don't know if it doesn't tell you anything, but I don't know it's definitive in and of itself either.

MS. CARVLIN: May I have one second, please, Your Honor.

THE COURT: Yes.

MS. CARVLIN: Thank you.

(Pause in the proceedings.)

Q You testified; did you not, in a case called United States versus Shnewer?

A Shnewer, yes.

Q And that was that was in 2008; isn't that right?

A I believe so, yes.

Q And were you asked this series of questions and did you give this answer?

MR. LOONAM: Objection.

THE COURT: Sustained.

Q Is it fair to say that not everyone who visits a terrorist training camp is a terrorist?
A I'd say that the number of people who visit terrorist training camps who are not themselves actually terrorists is a very small number.
Q Well, you were invited to visit a terrorist camp yourself, weren't you?
A I'd have to think of which example you're talking about.
If you're talking about Lashkare Taiba, I actually did not go. It was an associate of mine who went who's Pakistani who's in Pakistan.
The reason I didn't go --
Q I didn't ask you that, Mr. Kohlmann.
A Yeah.
Q I asked you if you have visited a terrorist training camp.
A Not me no.
Q Were you asked?
A I was invited to come observe a speech given by a leader of that organization at the camp, yes.
Q And you sent a colleague instead; is that right?
A That's correct, yes.
Q Now, the al-Sahab videotapes, is it fair to say that they're fairly sophisticated?
A They are Hollywood quality.

Q Good production values?
A There's a lot of time and effort put into those videos, yes.
Q And a big part of these is a heavy application of guilt; isn't that right?
A That might be one part of it. There's a lot of things that go into those videos.
Q I'm asking you if one part of what goes into those videos is extolling young Muslim men to do something for their brothers; is that right?
A That's correct.
Q There's a lot of asking and extolling people to help those who are being oppressed in those videos?
A That's correct, yes.
Q And there's also, I think you said, the promise of a reward or many rewards; is that correct?
A Yes, that's correct.
Q Would it be fair to say that Al Qaeda uses a fairly high level of manipulation and deception in terms of its soliciting of members?
A Manipulation and deception are very loaded terms. I think you could say it has a very effective and careful recruiting process.
Q And manipulative?
A Again, that's a loaded term but yes, they do manipulate

people.

Q Thank you.

MS. CARVLIN: Okay, I have no further questions, Your Honor.

THE COURT: Thank you.

(Continued on following page.)

THE COURT: Is there any redirect?

MR. LOONAM: None.

THE COURT: You are excused. Have a good day.

Let's take our afternoon break.

Don't discuss the case.

THE WITNESS: Thank you, Your Honor.

(Whereupon, the jury exited the courtroom)

THE COURT: What is left?

MS. BERGER: We have one final witness, surveillance agent, and then we will play a call.

THE COURT: Your interpreter is here?

MR. DINNERSTEIN: We will check.

THE COURT: Are there any applications?

MS. CARVLIN: There will be applications.

(Court recessed); (Court resumed)

(Jury is not present)

THE COURT: Be seated in the back and in the front.

MS. CARVLIN: Your Honor, if I could.

THE COURT: Wait for your client.

(Defendant now present)

MS. CARVLIN: I would ask Your Honor to give the expert instruction again. I didn't remember either. Maybe before the next witness.

THE COURT: Sure.

MS. BERGER: May have we the witness take the stand.

THE COURT: Yes, come on up.

(Jury entered the courtroom).

Please be seated, everyone.

Before we administer the oath to this next witness, a brief reminder about the kinds of -- brief reiteration about the instruction I gave about the kind of testimony you just heard from Mr. Kholmann. It is expert testimony. He is not a fact witness. Rather, he's someone who, by virtue of his education or experience or specialized knowledge, is allowed to testify to things that are beyond the knowledge of the average juror all in an effort to facilitate you, your determination of the facts, and you will give whatever weight to any expert expert's testimony, including Mr. Kholmann, and we had another expert earlier in the case. You'll give whatever weight you deem appropriate in light of the expert's qualifications, and in light of all testimony given. You are the one who decides the facts, and the expert's testimony is never a substitute for a jury's determination of the facts.

All right. Any objection to the instruction?

MS. CARVLIN: No, Your Honor.

THE COURT: Okay. Could you stand up please. Raise your right hand.

T H E O D O R E R O E S E , having been first duly sworn/affirmed, testified as follows:

MS. BERGER: May I inquire?

THE COURT: Yes.

DIRECT EXAMINATION

BY MS. BERGER:

Q Good afternoon.

A Good afternoon.

Q Where do you work?

A I work for the FBI in El Paso, Texas.

Q What is your title?

A I am a special agent.

Q How long have you been with the FBI?

A I've been with the FBI since 2004.

Q And what kind of cases do you currently work on?

A I work on civil rights and violent crimes cases.

Q Where were you assigned in January of 2010?

A In January of 2010 I was working on a surveillance team in the New York office.

Q Were you part of Joint Terrorism Task Force?

A Yes, ma'am I was.

Q Directing your attention to January 7th of 2010, were you part of team conducting surveillance that day?

A Yes, ma'am, I was.

Q Where were you conducting that surveillance?

A In Flushing, Queens.

Q You watching a particular target?

A Yes, ma'am.

Q Do you recall what that person's name was?
A Yes ma'am. His name was Adis Medunjanin.
Q And do you see that person in the court today?
A Yes, ma'am, he is seated at defense table.
Q Can you identify him by an article of clothing he is wearing?
A He's wearing a black or dark suit and gray shirt with a gray tie.
THE COURT: Identifying the defendant.
MS. BERGER: Thank you, Your Honor.
Q Where did the defendant live?
A He lived at 29-49 137th Street in Flushing, ma'am.
Q Did you conduct a surveillance of the defendant before?
A Yes, ma'am.
Q Approximately how many times?
A For approximately one month prior to that date.
Q How many people were part of your surveillance team that day?
A On that day we had four people and a fifth member of the team showed up later.
Q Were you in a vehicle or on foot?
A I was in a vehicle, ma'am.
Q And were you alone or with others?
A I was alone in my vehicle.
Q How were you communicating with the other members of the

team?
A By radio, ma'am.
Q Do you recall about time your shift began on January 7th?
A I recall the shift began at approximately one o'clock p.m.
Q Where was the defendant when you started your shift?
A To my knowledge, ma'am, the defendant was in his apartment building or his condo building.
Q Were all members of the surveillance team watching the defendant's apartment building at the same time?
A No, ma'am.
Q Was there always somebody who had a view of the building?
A Yes, ma'am, always at least one person.
Q Where were you at the beginning of the shift?
A At the beginning of the shift I was with the other team members who were not watching the residence across the Whitestone Expressway and Toys R Us parking lot.
Q Did you see the apartment building from that parking lot?
A Not from there, ma'am, no.
MS. BERGER: I'd like to show the witness what's in evidence as Government Exhibit 49.1. If Your Honor pleases, can we put this on the Elmo?
THE COURT: Yes. Go ahead.
Q Do you recognize this?
A Yes, ma'am, I do.

Q What are we looking at here?
A This is an aerial photograph of the vicinity that includes the Whitestone Expressway. On the left side is Toys R Us where we were parked in the parking lot and one of the buildings on the right side is the defendant's former residence.
Q If you could touch the screen. Just touch the scene where the area of Toys R Us parking lot was?
A I believe that's the Toys R Us building right there.
Q And can you indicate on the screen approximately where the defendant's apartment building was?
A Doesn't light up exactly where I touched it but --
Q Let me just put my pen right there. Is this the general area where the defendant's apartment building was?
A Yes, ma'am.
Q I believe you testified at the beginning of your shift you were in the Toys R Us parking lot; is that correct?
A That's correct, ma'am.
Q Did there come a time when you were actually the person watching the defendant's apartment building?
A Yes, ma'am.
Q What is that called?
A That is call the eye.
Q When you were the eye, what, if anything, happened with the defendant?

A Yes, ma'am.

At approximately 3:47 p.m., according to my surveillance notes, the defendant exited his residence by foot and walked to his car.

Q Did you communicate that to anyone else?

A Yes, to the team by radio.

Q What did you do?

A He pulled out in his vehicle and I followed him, and I continued over the next few moments to communicate the defendant's movements over the radio to the rest of the team.

Q Where did you drive?

A He drove west down -- northwest down 137th Street to Whitestone Expressway.

Q Sir, if you can, just indicate on the screen where the defendant drove?

A That's some representation of 137th Street and then there's an access road and then he proceeded northbound up the Whitestone Expressway.

Q Did you see the defendant driving?

A Not the entire time. Particularly the time after he turned off of 137th Street he was out of my -- out of my view for a few moments, but once I made the turn onto the access exception road I was able to observe him driving up the expressway.

Q As you were following the defendant do know how fast he

was driving?
A I was driving approximately 90 miles an hour.
Q Was the defendant driving faster than you?
A He was driving at least as fast as I was driving.
Q What did you see next?
A We proceeded up the expressway until we reached the point where there's one last exit, and then the Whitestone Bridge begins, and at that point the defendant had been maneuvering his car back and forth between traffic, and at the point where we reached the base of the bridge the defendant's vehicle was in the far right lane. Then he cut across two or three lanes to the left and into another vehicle.
Q Now, after you witnessed that, what did you see the defendant do?
A After that he got out of the car and began running towards the median to the west of the northbound lanes.
Q What did you do?
A I parked my car. I notified the rest of my team that I was leaving my vehicle. I stopped my vehicle on the west shoulder of the northbound lanes approximately a hundred yards south of where the collision had taken place, and I ran up to the point where the defendant had jumped over the concrete barrier.
Q What did you do next?
A I called for him to come back.

Q What did the defendant do?
A He continued running into the median for approximately five to ten seconds, but eventually, he did stop, and on his own power he came back to the median.
Q I'm going to show you what's --
MS. BERGER: Your Honor, may I ask the witness to step down.
THE COURT: Yes.
MR. DINNERSTEIN: Your Honor, may I just move over.
THE COURT: Of course.
MS. BERGER: This is Government Exhibit 49.3.
Q All right. Agent Roese, what are we looking at here?
A This is the exit that I was referring to. These are the northbound lanes of the Whitestone Expressway, and if you continue up here you eventually get onto the Whitestone Bridge.
Q Can you show us where on this map the defendant crashed his car into another?
A The collision took place approximately where these white lines begin down in this vicinity.
Q And where were you, if you could show us generally at the time that happened?
A At the time that the collision took place I was still in my vehicle approximately a quarter of a mile behind, and then when the defendant exited his vehicle he ran into this

concrete barrier and jumped into this wood median. I exited my vehicle approximately hundred yards south of this location along this concrete barrier and I ran up to where he'd jumped over the median.

Q And where was the defendant approximately when he stopped running on the median?

A Maybe halfway through. Maybe halfway through this wood area.

Q Okay. Thank you?

You can return to your seat.

A Yes, ma'am (witness complied).

Q You testified that after you called for him to stop, the defendant did, in fact, stop running; is that correct?

A Yes, ma'am.

Q And what did the defendant do next?

A He came back to the median.

Q And how did the defendant appear physically?

A He appeared to be fine. He was walking on his own power. He came back across that concrete barrier on his own power.

Q And what happened next between you and the defendant?

A At that point there was another individual standing at that barrier who subsequently identified himself as an off duty police officer. Unfortunately, I never did get his name, but I let him know that I was with the FBI. He had also been calling for the defendant to stop, and so, when the defendant

came back across that concrete barrier I placed him in handcuffs.
Q And why did you place the defendant in handcuffs?
A I placed him in cuffs because I had observed him commit what I believed at the time to be a violent act against another person, and it was my perception at that moment that the act was intentional.
Initially I had seen him then flee that scene, at least initially until the point where he came back on his own.
Q You testified that to you it appeared that that act was intentional?
A Yes, ma'am.
Q What makes you say that?
A That if it had been an accident, I mean, typically if we are going to be in an accident we try to avoid the contact or the collision with another vehicle, but it was my perception that based on my position of observation that he had intentionally run into that other vehicle.
Q What happened after you placed the defendant in handcuffs?
A By that point the members of my team had begun arriving at that scene and I specifically recall that Specific Agent Aaron Spivack had arrived at the place where the collision had taken place, and I asked Agent Spivack to escort the defendant to a position off the road and to search him.

Q And where off the road did Agent Spivack escort the defendant?

A To the -- there's a green exit sign at the top of that merge area and that's where we took him to. There was a lot of traffic trying to get around the collided vehicles and so for the defendant's safety and our own safety we tried to move him to a place where he was -- he would be a little bit safer.

Q What happened when you got to that area -- the merger area?

A He was searched.

Q Did you search him?

A No, I believe Agent Spivack searched him.

Q Did you have any conversations with the defendant?

A Only to ask him if he was okay, otherwise we didn't have any other conversations.

Q How did the defendant respond?

A He said that he was okay initially, but then after, I would say 15 or 20 minutes, he began to complain of pain in his neck and then his collarbone.

Q What happened next?

A We searched him. It was a cold day, so he asked for his coat after a while. We brought him his coat from his vehicle, and he just sat with his legs crossed and that he was handcuffed behind his back. He sat with his legs crossed and his head down until the point that he identified to us that he

was starting to have some pain.
Q You testified that you -- a member of your team searched the defendant, do you know whether anything was recovered from the defendant?
A I don't think anything was initially recovered but we also, when he began to ask for his coat, we searched that as well before we gave him his coat.
Q Did you recover anything from the coat?
A I believe that there was a Koran in his coat and that there was a set of keys. Beyond that, I don't think there was anything of significance in there.
Q You testified that the defendant complained about pain in his shoulder; isn't that right?
A In his neck and I think in his collarbone, I think he said.
Q What happened next?
A Over the next ten to 30 minutes, emergency services began to arrive, police vehicles arrived, the fire department arrived, and eventually an ambulance came.
Q What happened when the ambulance came?
A At that point we had made the decision -- I say we -- the deem leader who was Detective Barandon at the time made the decision that they were going to escort the defendant to the hospital because he had been complaining of pain.
Q Did you accompany the defendant to the hospital?

A No, ma'am, I did not.
Q Agent Roese, did you have any additional role in this investigation after that day?
A No, ma'am.
Q I am now going to show you what's in evidence already as Government Exhibit 43, 44, and 45?
MS. BERGER: May I publish, Your Honor?
THE COURT: Yes.
Q Starting with the Government Exhibit 43, do you recognize this?
A Yes, ma'am.
Q What is this?
A This appears to be the defendant's vehicle that he was driving that day.
Q Is this the location where the defendant crashed his vehicle?
A No, I don't think so.
Q Let me show you Government Exhibit 44. What is this?
A That's the same vehicle, ma'am.
Q Does the car appear to be in the same condition as it was after you witnessed the crash?
A Yes, ma'am.
Q And finally, Government Exhibit 45, do you recognize this photo?
A Yes, again the same vehicle.

MS. BERGER: Nothing further.

THE COURT: Thank you.

CROSS EXAMINATION

BY MR. DINNERSTEIN:

Q Agent Roese, how long did you say you've been working for the FBI?

A Since 2004, sir.

Q And for a portion of that time you were working in New York; is that correct, sir?

A Yes, sir.

Q You worked in New York from 2004 past January of 2010; is that correct?

A Actually, sir, I began working in New York in 2008 through May of 2010 and I was in our Cleveland, Ohio office prior to that time.

Q And while you were in New York you said, sir, you had worked with the Joint Terrorism Task Force; is that correct?

A Yes, sir, that is correct.

Q And during what period of time did you work in the Joint Terrorism Task Force in the New York office?

A I believe that I began working for the JTTF in January of 2009.

Q And you worked from January of 2009, at least, through January of 2010?

A Yes, sir, that's correct.

Q Now, you said, sir, that you were part of a surveillance team regarding this particular investigation; is that correct?
A Yes, that's correct.
Q And how long, sir, had you been on the surveillance team?
A My entire period of work for the JTTF was with that surveillance team, sir.
Q You indicated that for about a month you were doing surveillance at 29-49 137th Street; is that correct?
A Approximately a month, yes, sir.
Q And that would be -- the subject then was Adis Medunjanin; is that correct?
A That's correct, yes.
Q There were a number of officers who were members of that team; is that correct?
A That's correct.
Q And do you know whether or not there was a 24-hour surveillance as to Mr. Medunjanin's home?
A I'm not sure, sir.
Q That would not be your assignment; is that correct?
A Our team would not have been assigned to surveil him 24 hours a day. We might have been rotating eight-hour shifts at that point. I can't recall, sir.
Q Now, sir, when Mr. Medunjanin would leave the residence you would go to whatever location he went to; is that correct?
A Yes, sir, that's correct.

Q Did that happen on a regular basis that he would leave his residence?
A I believe that the only time I'm aware he left his residence was he had some kind of job in Manhattan on the weekends.
Q And he would drive to the job; is that correct?
A At this point, sir, I can't recall how it is he would get there -- I think he took the train, sir, or the bus. I can't remember, sir.
Q So he would walk to the bus station or he would walk to the train station and then take the train; is that correct?
A Yes, sir, I think that is true.
Q And would one of the agents, if he took the train or the bus, would they also get on the train or bus to see where he went?
A That initially we would have done that. However, after a period of time we had established his pattern, so to speak, and so it became unnecessary to do that. We simply sent a vehicle forward and had somebody observe him get off the bus once he got into Manhattan or back into Flushing.
Q Now, up until January 7, 2010, did that anything unusual happen during the surveillance period of time?
A I'm sorry. I don't know what you mean by unusual.
Q Well, other than going to work or going possibly to the store, did anything happen that seemed out of the ordinary?

A No, sir.
Q Now, let's just talk very briefly about the surveillance of January 7th of 2010. Now, did you know on that particular date -- I'm sorry, are you ready?
A Yes, sir. Thank you.
Q Did you know on that particular date that a search warrant was to be executed?
A I became aware of that, but at this point I am not sure if I was aware of that before these incidents took place or if I became aware of that after the incidents took place.
Q You said, sir, that you began work on that particular date at about one o'clock; is that correct, sir?
A Approximately, yes, sir.
Q And that you were ine the Toys R Us parking lot; is that correct?
A Yes, sir.
Q And the Toys R Us parking lot is relatively close by to this particular address?
A Yes, sir, it is.
Q And you -- at some point you became and it's a term we've used, a term of art I guess -- the eye of the surveillance, did you become the eye of the surveillance at some point?
A Yes, sir, I did.
Q And when, sir, did you become the eye of the surveillance?

A I am not exactly sure, but we typically take one hour shifts on the eye, so I believe that I took over the eye at three o'clock p.m.
Q And you didn't see if there was a search warrant that was executed, you didn't see that happen; is that correct, sir?
A No, sir, I did not observe that.
Q Now, you did see, though, at some point Mr. Medunjanin going into his vehicle; is that correct?
A Yes, sir.
Q And you actually -- you wrote that down on the surveillance log that you saw him go to the vehicle; is that correct?
A That's correct, sir.
Q Now, did you write that down when you made the initial observation or did you write that down afterwards?
A No, I wrote it down as it happened, sir.
Q After you said that you saw Mr. Medunjanin get into a vehicle; is that correct?
A Yes, sir.
Q Did you see Mr. Medunjanin drive to a gasoline station?
A No, sir.
Q Did you at any time see Mr. Medunjanin fill up containers with gasoline?
A I did not, sir, no.
Q Did you know, sir, how much gasoline was in the car when

it wasn't involved in this crash?
A No, sir.
Q The car was being driven in the correct way going northbound; is that correct?
A I was going in the right direction but --
Q That's what I meant. You said excessive rate of speed.
A At an excessive rate of speed, yes, sir.
Q It wasn't driven in a way that would cause a front end collision?
A No, sir.
Q So it wasn't being driven, let's say, northbound in the southbound lane?
A No, sir. Northbound in the northbound lane.
Q It was going northbound in the northbound lane?
A Yes, sir.
Q So in terms of going the right direct, it was following the traffic rules; is that correct?
A In terms of going the right direction, yes, sir.
Q But you said it was going, you thought, in excess of -- it was going about 90 miles an hour?
A Approximately, yes, sir.
Q Now, you said that you saw Mr. Medunjanin's car hit into another vehicle; is that correct.
A Yes, sir.
Q And after it hit into another vehicle you said that you

saw him get out of the vehicle and go towards where those trees are in the median; is that correct?
A Yes, sir, that's correct.
Q And you see that there's I guess a short -- a small concrete wall that one would have to climb over; is that correct?
A Yes, sir.
Q And could you approximate the size of that concrete wall?
A Approximately three feet high.
Q And so you would say you saw him right around where those two trees are in the middle, is that correct, can you see it?
THE WITNESS: May I go down?
THE COURT: You can go down.
THE WITNESS: Thank you.
A Yes, that's where the collision -- I saw the collision took place, approximately, where these white lines begin, and the defendant ran essentially directly west to the median-- to the concrete barrier and went over the barrier.
Q So he would have run -- could you approximate the distance, sir?
A In total or to the concrete barrier, sir?
Q In total.
A I will say approximately 30 to 40 yards but probably not more than that. (Witness returned to his seat)
Q Now, sir, you said that there was another individual that

you later learned was a police officer; is that correct?
A Yes, sir.
Q And did that police officer approach Mr. Medunjanin, do you know that?
A No, but he was standing at that concrete barrier at the time that Mr. Medunjanin came back to us across the barrier.
Q And you said you didn't get his name?
A I'm sorry, I did not, sir.
Q Now, sir, you also said that Mr. Medunjanin's vehicle hit another vehicle; is that correct?
A Yes, sir.
Q And did you find out whether the person in the other vehicle had been injured as a result of this collision?
A I did observe him standing outside of his vehicle and although I didn't have what I would call a conversation with him, I did hear him speaking, so he appeared to me to be okay.
Q Did you learn what his name was?
A No, sir, I did not.
Q Did you know if any other individual, any FBI agent or any police officer, ever found out what his name was?
A I don't know, sir.
Q And do you know whether or not he went to the hospital also?
A I don't know that either, sir.
Q Now, sir, you said that after Mr. Medunjanin came back to

you, you placed him under arrest; is that correct?
A That's correct, sir.
Q And what was the charge that you arrested him for?
A I didn't charge him with anything at that moment, sir. As I described, I placed him in custody based on my observation.
Q And when -- what's the difference, sir, between being placed in custody and being charged with a crime?
A We placed him in custody pending a decision by the case team and prosecutor's office on whether or not he will be charged with a crime, sir.
Q Now, the charge that you were referencing to was the way that he drove the vehicle; is that correct?
A Yes, sir, that's right.
Q And was he ever charged with the way he drove the vehicle?
A I don't believe so. If you mean reckless driving or something like that, I am not aware of any charges being brought against the defendant.
Q Now, you handcuffed him, you handcuffed him behind his back; is that correct?
A Yes, sir, that's correct.
Q And he then was put down on the ground; is that correct?
A I think that Agent Spivack put him on the ground in order to conduct the thorough search.

Q And at that point he was complaining of having some pain; isn't that correct?
A No, sir, that's not correct. It wasn't until maybe 15 or 20 minutes later that he first indicated he was experiencing pain.
Q Well, you had just observed an accident or a crash where there was a lot of damage to his vehicle; isn't that correct?
A Yes, sir.
Q Seeing such a thing, you would expect that somebody may be in some pain as a result of being in that crash; isn't that right?
A It would not surprise me if he was in pain, sir.
Q So were you surprised, sir, that he claimed not to have been in any pain or did you not ask him that question?
A I did ask him if he was all right and he said he was fine.
Q And then it was only later that he complained of shoulder pain?
A Yes, sir, that's right.
Q You said, sir, that other than that short conversation with Mr. Medunjanin, you did not speak with him; is that correct?
A That's correct.
Q And you did not go to the hospital; is that correct?
A That's correct, sir, I did not go to the hospital.

MR. DINNERSTEIN: Thank you, very much.

THE COURT: Thank you, Mr. Dinnerstein.

Is there anything further?

MS. BERGER: Nothing further.

THE COURT: You can step down. You are excused.

Thank you, sir.

THE WITNESS: Thank you, Your Honor.

THE COURT: Call your next witness.

MS. BERGER: We will read a stipulation and then we will call our next witness.

THE COURT: All right.

MS. BERGER: We read part of this into evidence already. This is Government Exhibit 118:

Paragraph two reads (reading):

Government Exhibit 116 is a recording of a telephone call placed by the defendant Adis Medunjanin to 911 that was lawfully obtained by the government.

Government Exhibit 116 T is an accurate transcript of Government Exhibit 116.

Government Exhibit 116 T accurately indicates the date and time of which the recorded conversation began and accurately indicates the telephone number involved in the call.

Government 116 and the stipulation are admissible.

THE COURT: 116 is received. Stipulation was received earlier, I take it?

MS. BERGER: Yes. Now, we offer the full stipulation.

THE COURT: Received.

(Government Exhibit 116 received and marked into evidence)

MS. BERGER: If I could ask the jurors to take out their transcript binders.

THE COURT: Yes, please do that, ladies and gentlemen.

MS. BERGER: Marked 116 T.

If I could have them turn to page two.

THE COURT: Okay, everybody there?

MS. BERGER: Thank you, Your Honor.

(Tape played); (Tape stopped)

Thank you, Your Honor.

The government rest rests.

THE COURT: Come up to side-bar, counsel.

(The following took place at side bar)

THE COURT: What I would like to do -- the reason I want you here is TO get your comments. I would like to have rule 29 argument deemed made. I will hear argument on it a little bit later but I would like to get these two witnesses, Do you have the interpreter here?

MS. CARVLIN: We do.

MR. BITKOWER: Yes.

MR. GOTTLIEB: There may be -- there may be three.

THE COURT: We will sit a little later if we need to.

MR. BITKOWER: We have objection to the potential testimony of the father. At the suppression hearing he testified that Detective Angel Maysonet told him on September 29th your son doesn't need a lawyer, why pay for a lawyer, it is expensive to pay for a lawyer. We object based on relevance, 403.

MR. GOTTLIEB: Well, Your Honor, the first goes to the credibility. We had the agents Azad already asked about that conversation. He denied hearing anything about that happen, about what happened or hearing anything along those lines when Agent Maysonet visited the father. This ultimately would go to the issue of voluntariness, as well as credibility but voluntariness of the statements because this relates to Adis Medunjanin about what the agents are saying. It is part of that chronology leading to his mindset on January 7th where he then get involved in the accident.

THE COURT: Anything further?

MR. BITKOWER: Yes, Your Honor.

To the extent that the argument made as to the agent's credibility, it would be impeached by extrinsic evidence. To the extent that it is made to the defendant's state of mind at the time of post arrest statements, on post arrest statements initially, in fact, the defense argument is that the defendant didn't tell the agent the lawyer was too expensive, then that would tend to establish voluntariness, rather than not voluntariness, and thus, would be irrelevant from the defense's point of view.

THE COURT: Overruled.

(The following took place in open court).

THE COURT: I told you we would get to this point. The government rests its case and now, as you recall, the defendant has an opportunity to, but no obligation to, present evidence in defense of the charges. I have been informed by counsel for the defendant that they'll avail themselves of that opportunity, so we will proceed directly into that.

Call your first witness. Please.

MS. CARVLIN: Yes, Your Honor.

The defense its first witness.

(Witness enters courtroom)

THE COURT: Come up here, please.

Could you raise -- do you speak English?

MS. CARVLIN: We are waiting for the interpreter. I apologize.

THE COURT: Have a seat.

MS. CARVLIN: Your Honor, apparently the interpreter is not currently here, so we will call Alysa

Medunjanin instead.

THE COURT: Okay. Just step outside for a minute. Please. We will come back get you.

MS. CARVLIN: I apologize, Your Honor.

THE COURT: It's okay.

Come up here, please.

A L Y S A M E D U N J A N I N , having been first duly sworn/affirmed, testified as follows:

DIRECT EXAMINATION

BY MS. CARVLIN:

Q Alysa, do you know Adis?

A Yes.

Q And how do you know him?

A He is he brother.

Q Are you the older or younger sibling?

A Older.

Q When were you born?

A 1982.

Q And when was he born?

A 1984.

Q And do you know -- do you work for a living, Alysa?

A Yes.

Q What do you do?

A I'm a registered nurse.

Q What type of environment do you work in?

A Emergency department.
Q What type of facility?
A In hospital setting.
Q What is does an RN do?
A Take care of patient needs.
Q And are there requirements that somebody has to fulfill in order to become a registered nurse?
A Yes.
Q What are they?
A They have to obtain a license.
Q I am going to talk to you a little bit about your background. Were you born in the United States?
A No.
Q Where were you born?
A Bosnia.
Q When did you come to the United States?
A 1994.
Q And when you came here did you speak English?
A No.
Q Who came with you when you came here in 1994?
A Me, my mom and my brother and me.
Q Did your father come with you then?
A No.
Q Did your mom speak English?
A No.

Q Did Adis speak English?
A NO.
Q Did your family, when you came to the United States, have any particular religious background?
A Yes.
Q What kind religion are you all?
A Muslim.
Q And how was it when you first came here?
A We didn't speak English, so it was strange.
Q After a while did you learn to speak English?
A Yes.
Q Where did you go to school when you were in grade school?
A I went to Bayside and Francis Lewis PS 79.
Q And what about Adis, where did he go?
A Same school.
Q And did you go to high school here?
A Yes.
Q And how about Adis, did he go to high school here?
A Yes.
Q And did you go to college?
A Yes.
Q And did Adis go to college?
A Yes.
Q Where did he go to college?
A Queens College.

Q And did there come time when your dad came to the United States?
A Yes.
Q And what year was that?
A I'm not sure. I think in October 1995.
Q And once he came here did you all live together or separately or --
A Yes, together.
Q And without giving us the address, where did you live when you first came here?
A Flushing, Queens.
Q And in the year 2008, where were you all living?
A Flushing, Queens.
Q In 2009?
A Flushing, Queens.
Q What kind of building did you all live in, in September of 2009?
A Six story building.
Q What floor did you live on?
A Sixth floor.
Q And can you explain to us how somebody gets into the building if they're coming to visit?
A There is a lobby. They have to -- theres a buzzer and you have to buzz so the visitor can come in.
Q And how do you tell in your apartment who is trying to

get in?
A There's a phone and you ask who is it, or there is also surveillance camera so you can see who's coming in. You can see the person.
Q And where do you look to see who the person is who's coming in?
A TV. It is connected to TV.
Q And I want to talk to you about September 14, 2009. Was it Ramadan?
A Yes.
Q And how do you know it was Ramadan, how do you remember that?
A Because we were fasting, we were preparing food and praying.
Q How does, for a Muslim, fasting play into Ramadan?
A You fast. I am not sure.
Q When do you fast?
A During the time of Ramadan.
Q And from what time to what time? Is it all the time?
A No, it's from sunset to sundown you fast. You can't eat anything or drink.
THE COURT: You said sunset to sundown?
THE WITNESS: Yes, from sunset to sundown. From night to day. From day to night.
THE COURT: You eat during the day or at night?

THE WITNESS: We eat during the night.
Q And once you break the fast, what does that consist of?
A You say a prayer, and you eat food.
Q At Ramadan in September 14, 2009 do you recall who was in your home to break the fast?
A My family. My -- me, my mom, and my dad and my brother.
Q And your brother is?
A Adis.
Q Do you have any other siblings?
A No.
Q Did there come a point in time when you went to bed?
A Yes.
Q Did anything unusual happen in the middle of the night?
A Yes. During, like, in the morning time, around one to two a.m. somebody buzzed our door. I was in my bedroom sleeping.
Q How do you know somebody buzzed?
A I heard the buzzer.
Q What did you do when you heard buzzer?
A I was startled and I was look -- and asked my mom and my dad who is this. We don't know.
Q When you heard the buzzer where were you located?
A I was in my bedroom.
Q And did you leave your bedroom?
A Yes.

Q Where did you go?
A Living room.
Q And who was there when you got there?
A My mom -- my mom, my dad and my brother, too.
Q Did there come a point in time when your brother was in the room with you all?
A Yes.
Q And after you heard the buzzer what happened?
A My dad was -- I don't know -- me and my dad looked, we turn on the TV to see who was buzzing door.

MS. CARVLIN: Judge, at this time I would like to read a stipulation.

THE COURT: Yes.

MS. CARVLIN (reading): Defense Exhibit D is a videotape of the lobby at 29- 49 137th Street, Flushing, New York, taken on September 14, 2009 during a lawful execution of a search warrant by agents of the government.

Videotape was made in the lobby in the regular course of business by the management of the building at 29-49 137th Street, Flushing, New York.

Defense Exhibit D, and this stipulation is marked as Defense Exhibit E are admissible in evidence.

I'd like to play Defense Exhibit D at this time, Your Honor.

THE COURT: Defense D and E are received and yes, go right ahead.

(Defendant Exhibits E and D received and marked in evidence).

It is on the laptop there?

MR. HEINRICH: This one here, Your Honor.

THE COURT: Ilene is in charge, thankfully.

Thank you, Ilene.

(Tape played); (Tape stopped)

Q Is that what you saw that evening when you looked through the video monitor?

A Yes.

Q What happened after you saw that on your TV screen?

A After we saw that we don't know what to think. They -- they immediately came down and they said FBI. They just barge in. Broke the door.

Q And at that point when the FBI broke the door and came in, who was in that room with you?

A We were all there -- my mom, my brother, and my dad, and me.

Q What happened after the FBI entered?

A They told us to get on the ground, they told us to lift up our hands and they told us to put -- cuffed us.

Q How many people came in that evening from law enforcement?

A I'm not sure.

Q Once you were down on the ground what happened?
A I was crying.
Q Did there come a point where they got you back up?
A Yeah.
Q Where was Adis and your father at this point?
A They were in the room.
Q Did you all stay together?
A Me and my mom, they told us to get on the couch, and then they took my brother and my dad somewhere.
Q Did you know where they were taking your brother and father?
A No.
Q Were you taken anywhere?
A After that they told us to go the room and get dressed, to put on the clothes, and they will tell is -- they told us where to go.
Q Where did they tell you to go?
A They escorted us in the lobby.
Q Who escorted you to the lobby?
A I believe police officer, agent.
Q How many agents or officers were with you?
A I am not sure but I think two.
Q How about your mom, could you see where she was?
A She's at -- she was close but not next to me.
Q How long -- what happened once you got to this lobby?

A They questioned us -- questioned me.
Q Did they question your mother?
A After they questioned me, then they brought my mom, and they questioned her.
Q How were they able to question your mom?
A My mom doesn't speak English, so I interpreted for her.
Q How long did that go on, the questioning of you and your mother?
A I'm not sure. Few hours.
Q Where were you during that time period when you were being questioned?
A In the lobby.
Q Did you ever see Adis and your father again that day?
A Yes.
Q Who did you see first?
A My dad.
Q And how long after you'd been taken out of the apartment did you see your dad?
A I'm not sure.
Q Would you say it was a very short period or longer period?
A It was a few hours. Maybe three. I'm not sure.
Q And did your brother come back that day?
A Yes.
Q How much longer after your dad came back did your brother

come back?
A Maybe, like, 15 minutes.
Q After the four of you were together again, were you allowed to return to your apartment?
A No.
Q Why not?
A They told us they're searching and we are not allowed to go back, so we can go anywhere but not in our apartment.
Q How long was it before you were able to get back into your apartment?
A Maybe like an hour, half hour.
Q When is the next time that you personally had any contact with the FBI?
A It was few days later. I was sleeping and I heard noise, somebody talking, and I opened. I saw two agents talking to my brother, and my brother's getting dressed, and they said they're going to take my brother for questioning.
Q Did you hear them say anything else to your brother?
A No.
Q How long was your brother gone?
A The whole day.
Q Now, after that contact with the FBI, did you discuss hiring a lawyer with your brother?
A Yes.
Q What was decided?

A After we decided to get a lawyer. It was the best for us.
Q Do you have a memory today of exactly when that happened?
A I'm not sure.
Q Could you tell us about how long after that first time that the FBI came to your house?
A Maybe few days later.
Q Now, when is the next time the FBI came to your house?
A After they questioned my brother, then later on, maybe a day or two, another agents came and told me they have my laptop, so I can go downstairs to get it. And so I went downstairs, and they tell me you should -- you should tell your brother to tell us what he knows, and umm, he's in a lot of trouble. I said if he's in a lot of trouble, that means he needs a lawyer.
Q Now, the FBI came to your house on January 7, 2010; is that right?
A I'm a sorry. Repeat that question.
Q On January 7, 2010 did the FBI come to your house again?
A Yes.
Q How many agents came that day?
A Two.
Q Do you remember with time of the day they came?
A I think two o'clock in afternoon.
Q And what happened when they got there?
A Again, I was a sleeping, and I heard somebody talking,

and then they said they have the search warrant to obtain my brother's passport.
Q You said twice that you were sleeping. What work hours were you working then?
A I work nightshift.
Q And when would you normally sleep?
A So I will sleep during the daytime.
Q When you heard the agents and they mentioned the warrant, did they show you anything?
A They showed us the warrant.
Q And what did you do once you saw the warrant?
A After I went and I got the passports for them and they left, and -- I mean I got the passports and my brother took to sign for it.
Q Did you hear anything the agent said to your brother when he was signing for the passport?
A Yes.
Q What did they say?
A They said: Oh, what does that say Muhammed?
Q How did the Adis react to that?
A He was scared -- or startled.
Q Can you describe what he did that made you think he was scared or startled?
A He was like his facial expression.
Q What was his facial expression?

A I don't know like (indicating) and then I can't -- I don't know. Kind of like -- kind of have to be in the room to describe but it was -- he was (indicating). I don't know how to describe it.

Q Did he do anything else other than physically, other than get a strange facial expression?

A After they left he was pacing. He was, you know, what to do, and if he went on the computer and we saw, like, the search warrant, the name of the -- whatever it says here on it. And it says here something about some criminal act and we didn't know what that meant. So called the lawyer immediately.

Q So did you personally speak with the Adis' lawyer that day?

A No.

Q Did you have any conversation with the lawyer that day?

A Yes.

Q And to your knowledge did Adis call his lawyer that day?

A Yes.

Q How do you know that?

A Because I was there with him in the room -- in the same room.

Q How long after the agents left did Adis get a lawyer?

A Soon as we went on the computer and we saw immediately we call the lawyer.

Q You saw him go on the computer and look at these numbers?
A Yes.
Q What did you do after Adis called the lawyer?
A After he called the lawyer he hung up and I was crying. I didn't know what to do, and my brother was telling me go to sleep, go to sleep. He was, like, just running, running around the house, and I was, like, I don't know -- I don't know what to do, and so I listen. I left him and I went to bed.
Q And when you got up how much longer was it -- how much longer -- how much time past between the time that you went to sleep and the time you got up?
A The next time I got up it was about five o'clock.
Q Did you know what time the agents came?
A Two.
Q And what woke you up at five o'clock?
Did you just get up naturally?
A My mom came from the work and she was, like, where's Adis, where's Adis. My god, I don't know. I looked in the room. He wasn't there and I was like, oh, my god, they must have taken him. And -- I don't know.
Q What did you do after you realized Adis wasn't there?
THE COURT: Overruled.
A I called the lawyer?
Q Did there come a time later that day when you found out that Adis had been in an accident?

A Yes.
Q And what did you do then?
A We went to a local hospital to search for him.
Q And did you go alone?
Who went to the hospital.
A We met the lawyer there. So we went to the hospital and with the lawyer. He met us at the hospital.
Q Did you find Adis at the hospital then?
A No.
Q Did you go home right after that or --
A No. We went to local precinct to look for him there, and he wasn't there. So we went back to the hospital to look for him again, but he wasn't there.
Q Who went to the precinct?
A My mom, my dad, lawyer, and me.
Q And who went back to the hospital?
A All of us again.
Q And did you ever find Adis that evening?
A No.

MS. Carvlin: I have no further questions, Your Honor.

THE COURT: Thank you, Ms. Carvlin.

Any cross.

MR. LOONAM: One moment, Your Honor.

Very briefly, Your Honor.

CROSS-EXAMINATION
BY MR. LOONAM:
Q Good afternoon, Ms. Medunjanin.
Ms. Medunjanin, do you recognize Government Exhibit 65, that's your brother's bedroom, correct?
A Yes.
Q This is another picture from the other view of your brother's bedroom, correct?
A Yes.
Q And before your brother left Pakistan, ye told you he was going to Pakistan to get married, correct?
A Yes.
MR. LOONAM: No further questions.
THE COURT: All right. Nothing further, right?
MS. CARVLIN: No redirect.
THE COURT: You are excused. You can step out.
Thank you. Have a good day.
Call your next witness.
MS. CARVLIN: Yes, the defense calls Fadila Medunjanin .
I mentioned another exhibit. I want to make sure the record is clear, I showed the witness Government Exhibits 66 and 65.
(Witness enters courtroom)
D A R K O B O S N J A K , Bosnian

interpreter, having been duly sworn, interpreted the testimony as follows:

THE INTERPRETER: I do.

THE COURT: State your name for the record.

THE INTERPRETER: Darko D-A-R-K-O, last name Bosnjak B-O-S-N-J-A-K.

THE COURT: Could you raise your right hand.

F A D I L A M E D U N J A N I N, having been first duly sworn/affirmed, testified as follows:

THE WITNESS: I do.

THE COURT: Have a seat please.

State your name.

THE WITNESS: Fadila Medunjanin.

DIRECT EXAMINATION

BY MS. CARVLIN:

Q Ms. Medunjanin, do you speak some English?

A Yes, a little bit.

Q Are you more comfortable testifying with an interpreter?

A Yes.

Q So what I'm going to ask you to, even if you understand a little bit of the question, wait for the interpreter to translate it before giving your answer, please.

A Okay.

Q Do you know Adis Medunjanin?

A He is my son.

Q Where were you born?
A I was born in born in the Village of Pomol.
Q And was that part of Yugoslavia at the time?
A Yes.
Q Was there a dominant religious faith in Bosnia back in -- before the war?
A Yes, there was -- who wanted to participate.
Q What religious faith were you brought up in?
A In Muslim faith.
Q Are you married?
A Yes.
Q What is your husband's name?
A Abidin Medunjanin.
Q What year were you born -- I'm sorry -- were you married?
A 1981.
Q Do you have any children other than Adis?
A Yes, I have a daughter Alysa.
Q What year was Alysa born?
A 1982.
Q And what year was Adis born?
A 1984.
Q Did there come a point in time where you left Bosnia and move to the United States?
A When the war began I first went to the Belgrade.
Q Did you ultimately make your way to the United States?

A Two years later I then went to the Montenegro.
Q And after Montenegro where did you go?
A I came to America.
Q And who did you come to America with?
A I am came with my daughter and with my son Adis.
Q And do you have any other children other than Adis and Alysa?
A No, I don't.
Q Why didn't your husband come with you when you all came?
A It was a war, and Sarajevo was under blockade and men, male people, were not allowed to leave.
Q How long was it before he was able to join you in the United States?
A For approximately one year and a half.
Q And until he got here how did you support yourself and your children?
A Because we were refugees we were receiving welfare assistance.
Q And did there come a time when you got a job here in the United States?
A Yes, the organization that brought us here helped us find employment.
Q And what kind of employment were you able to find?
A I work as room cleaner.
Q And do you still do that now?

A Yes. I do.
Q And when your husband came was he able to find work?
A He first went to study English a little bit and then he also found a job.
Q And is that the job he is working now?
A Yes.
Q Where does he work now, what kind of employment?
A He works in a factory on the machine.
Q And was that the same job he had in September of 2009?
A No, it is not.
Q Where was he working in September of 2009?
A He worked in America in company Chem Cord (ph).
Q You mentioned that you're Muslim. Can you explain to me what the significance of Saudi Arabia is for the Muslim faith?
A In Saudi Arabia is Mecca, which is the holy place for the Muslims. This is the place where the Muslims attend Haj.
Q What is Haj?
A Haj is the duty of every Muslim. Completing the Haj is the duty of every Muslim.
Q What can you explain what Umra is?
A Umra is place that where one needs to visit when one is going to Mecca. It is a lesser place. It is lesser place that one just needs to visit.
Q And going to Umra would also be part of a religious obligation of a Muslim?

A No, this is not obligation of every Muslim. This is not a duty of every Muslim. Haj is a duty of Muslim.
Q And Umra is not a duty. Is that something that a Muslim would like to do if they were able?
A Yes.
Q To your knowledge did your son Adis go to Haj in Saudi Arabia?
A Yes.
Q Did you he go to Umra in Saudi Arabia?
A Yes.
Q Do you remember what year or years he went to -- what year did he go to Haj?
A I can not recall at this moment.
Q Okay. Fine?
Now, I want to talk to you about Ramadan in 2009. Do you remember September 14th, 2009?
A Yes, I do.
Q Was that during Ramadan that year?
A Yes.
Q Do you recall -- what does Ramadan entail as part of your religious observance?
A This is the biggest, the most important, Muslim holiday. This is the holiday that entails fasting for a month and during this fasting the Muslims eat only at nighttime, only in the evening and in the morning. Early in the morning, in th

evening. In the daytime people are not eating. People are fasting and people only eat in the evening at the nighttime prayer time.
Q Now, where were you living on September 14, 2009? What borough? What area?
A I live in Flushing.
Q And who did you live with?
A I lived together with my husband, with my son and with my daughter.
Q And had the four of you broken fast together that evening?
A Yes.
Q What happened after you -- what else did you all do after you broke fast?
A Then one prays, goes to bed, to sleep, in order to get up early in the morning for the early morning prayer.
Q Did anything happen in the middle of the night on September 14th, 2009?
A Yes, we were sleeping and FBI broke in. Came do us.
Q How were you awakened from your sleep?
A When they broke the door I was in my nightgown. I was sleeping with my husband.
Q And once the FBI entered do you know how many people came, law enforcement came in?
A I saw some of them. I saw some soldiers. They were under

the masks. I cannot recall -- there were many of them.
Q When they entered your home, where were you located, what room were you in?
A They found us in our beds. They found us sleeping in our beds.
Q How did you first become aware of them coming to your apartment?
A First I heard the bell ringing in the lobby.
Q And what did you do when you heard the bell ringing?
A Then I told my husband somebody is ringing at this time.
Q And what did your husband do?
A He said there were many old and ill people and maybe emergency vehicles come --
Q -- so what happened after you all left --
A -- and maybe ambulance is coming.
Q So what happened after you left the bedroom?
A They came there and they say lay down your hand behind your back and they were screaming as much as they could.
Q Did you do what they told you to do?
A Yes, we did.
Q And who else was there when they issued the order for you to lay down on the ground?
A The four of us who live there.
Q And that's who, who are the four?
A Myself, my husband, my daughter, and my son.

Q Once you were down on the ground could you see what the law enforcement were doing in your apartment?
A I saw they were search, looking for something under the bed, behind the bed. They were looking around.
Q How long were you on the ground before they let you get up?
A Five to ten minutes approximate.
Q And once you got up, what happened after that?
A They were telling us get up one by one and sit on the couch.
Q And did you stay on the couch or did they take you somewhere?
A First they were taking off the handcuffs from our hands. They took my husband and my son away, and my daughter and myself stayed there.
Q Did you know where they were taking your husband and your son?
A No, I do not.
Q And where did they take you and Alysa?
A They took me and Alysa down to the lobby of the building.
Q How long after you and Alysa got down to the lobby did you see your husband again or your son?
A They interrogated me and Alysa. They were holding the telephone and they finished in, approximately, about an hour's time, I believe.

Q Once your husband and Adis were back, were you all allowed to go back up into your apartment?
A No.
THE COURT: How much longer do you have? Excuse me for interrupting?
MS. CARVLIN: For this witness, just probably five minutes.
THE COURT: All right. Go ahead. Finish it up.
THE INTERPRETER: Can you please repeat your last question.
Q Sure. How long were you kept out of your house before you could return?
A First they told us that we would not be allowed to return to the apartment until the morning, but it finished fast. Within less than half an hour they told us that we were allowed to go back into the apartment.
Q After that incident occurred, did you hire a lawyer for your son?
A Ten days later we hired an attorney -- a lawyer.
Q Did you have any other contact with the FBI after you hired an attorney for your son?
A Yes.
Q What happened?
A On two occasions they were bringing telephone, and the computer, and the third day they meet me at work -- at my

place of work.

Q Did they call you before coming to your place of work?

A No.

Q How did you know they were at your place of work?

A They appeared all of a sudden. They recognized me and they told me that they are from FBI.

Q And how many agents were there?

A One woman, and one more woman who was interpreting, translating.

Q And the woman who was translating, what language was she speaking to you?

A She said that she was Bosnian and she was speaking Bosnian.

Q And what did she say to you? Tell us the entire conversation.

MS. BERGER: Objection.

THE COURT: Come up to side bar.

(Continued on next page)

(The following took place at side bar).

THE COURT: What is the answer going to? Be.

MS. CARVLIN: She was a mother too, she knew what I was going through, she understood, she should tried to get her to speak to them. It's not offered for the truth, Judge. It is offered for the state of mind because she then passes it on to her son.

THE COURT: Passes.

MS. CARVLIN: Tell him the FBI has come to her place of employment and told her these things.

THE COURT: And what will get argued to the jury if all this comes in?

MS. CARVLIN: Adis felt under pressure that the FBI had contact with his family, with his mother, with his father. They were pressuring his family and that they knew that --

THE COURT: All right. Do you want to be heard any further?

MS. BERGER: No.

THE COURT: Do you want a limiting instruction?

MS. BERGER: No, Your Honor.

(Continued on next page in open court)

BY MS. CARVLIN: (Continued)

Q What did the agents say to you?

A They told me to tell Adis to tell everything that he knew about the other two men.

Q And did they say anything else to you?

A And they offered to take me home in their car.

Q Did you have any contact with the FBI after that, before your son was arrested? Any more contact?

A No, not before he was arrested.

MS. CARVLIN: No further questions, Your Honor.

THE COURT: Is there any cross?

MS. BERGER: Nothing.

THE COURT: You're excused.

Thank you, have a good day.

(Witness excused.)

THE COURT: Can I see Counsel at side-bar, please.

(Side-bar conference held on the record out of the hearing of the jury.)

(Continued on following page.)

(Side-bar.)

THE COURT: We're all paying attention and you said you only had five minutes left of this witness.

MS. CARVLIN: I'm sorry Your Honor.

THE COURT: And this got everybody's attention.

MS. CARVLIN: I'm sorry, Your Honor.

THE COURT: What's left?

MS. CARVLIN: The father, and he'll be even briefer. I'm trying to do them shorter and shorter.

THE COURT: Yes, because it's cumulative as all get-out.

MS. CARVLIN: I want to try to just get from him the issue about the visits from the FBI.

THE COURT: Do you want to do it now?

MS. CARVLIN: No.

THE COURT: Well, let's do him first thing.

MS. CARVLIN: Thank you.

THE COURT: You've got your interpreter lined up for tomorrow?

MS. CARVLIN: That's a good question. I should find that out before I say no.

MR. BITKOWER: That's our guy.

THE COURT: Do we have an interpreter for tomorrow?

(Pause.)

MR. BITKOWER: Sure, he can be available.

MS. CARVLIN: Is he available?

MR. BITKOWER: I'm sure if I ask him --

MS. CARVLIN: Thank you.

THE COURT: Let's get the jury out of here and then we'll talk for a minute.

(Side-bar end.)

(Continued on following page.)

(In open court.)

THE COURT: All right, we've stayed a little late, thank for your patience. We're going to resume tomorrow at 9:30. Don't discuss the case. I think you'll hear summations tomorrow.

Safe home. Don't tweet, blog, or communicate in any other way with anybody about the case. Don't let any information about the case find you.

Have a nice evening. See you tomorrow.

All rise.

(Jury exits at 5:22 p.m.)

(Continued on following page.)

(In open court.)

(The following occurs outside the presence of the jury.)

THE COURT: Please, be seated.

By any chance, is Jonathan Dienst in the courtroom?

ALL: No.

THE COURT: I've reviewed this application from NBC Universal, for whom Mr. Dienst is the chief investigative reporter, and the Government's response, and I think the Government has the better of this argument; specifically, I think there are very serious national security and international cooperation interests that would be impaired by the visual of this.

I also think it's not useful to produce the video with his face and any other identifying features on him blocked out. So, I'm going to direct that the Government provide, which it already has provided, only the audio; with one caveat.

I want to you make a still from the video still, you can block out his face. If there's any other identifying information, I've forgotten exactly how he looked, but any other identifying information you can modify the still photo and I want you to produce the still in anticipation that it might be useful for the media interests to have that, redacted though it is, in conjunction with the audio.

Do you want to be heard any further, Mr. Bitkower?

MR. BITKOWER: Your Honor, I have the audio here, which has been prepared. I just need to go review it to make sure it's the same as the Exhibit, which I have not had a chance to do yet since I've been in court, but I'll do that once I've been get back to my office.

THE COURT: It's not just an electronic copy of it?

MR. BITKOWER: Yes, but made from the original, and I want to make sure it's right before we release it.

THE COURT: Do it forthwith, please, they have a keen interest in it and a right to it, to the audio.

Here's what I plan to do: I'll give you a draft charge now. I'd like to see you tomorrow at 9:00 o'clock for a charge conference. Once we've finished the charge conference, we'll finish the defense case. Then I'll hear, if you want to be heard orally on the Rule 29, I'll hear you on it. I think, since I have to view that motion in the light most favorable to the Government and credit the testimony of Najibullah Zazi and Zarein Ahmedzay, I think it's a difficult row as a matter of law for the defendant, but I'll hear you anyway if you'd like to be heard.

Obviously, even a denial of such a motion is always without prejudice to the renewal of the motion if there's an adverse jury verdict.

We'll commence the testimony as soon as we're done with the charge conference, then we will a take a break and have summations.

How long is the Government's summation?

MS. BERGER: Your Honor, my best estimate right now would be two to two-and-a-half hours.

THE COURT: Okay.

MR. GOTTLIEB: I believe it will be about the same, Your Honor.

THE COURT: All right.

In terms of the scheduling, my inclination is to do what we can to get the summations in tomorrow. If we can't -- and I really don't want to fail on that, but if we can't -- we'll come back Friday morning, briefly. The jurors are fine sitting part of the day Friday, but I prefer not to. If we get all the summations in, we'll come back Monday morning, I'll charge them and we'll deliberate.

MR. GOTTLIEB: Your Honor, that's fine. I just, obviously you know that what we're especially sensitive about having the prosecution's rebuttal on a different day. So, I know, obviously, you're very willing to work late. I just want to, as best as possible, getting all the summations in on one day without giving the Government that last word on Friday.

THE COURT: I'm ultrasensitive to that, I understand that.

MR. GOTTLIEB: Thank you.

THE COURT: That's why we're starting at 9:00 tomorrow.

What else?

MR. BITKOWER: Your Honor, obviously we'll look at the court's charge. Three concerns we have based on testimony argument or cross-examination that was made today.

Number one, Your Honor, did give an instruction about how the jury should consider questions about the fact that the defendant had an attorney. I think it's arguable that something stronger is going to be needed in the final charge; that there was an insinuation of the questions repeatedly, and it happened again on defense case, that the agents acted improperly when they --

THE COURT: I don't mean to interrupt you but it is late. I understand. Any concerns you have in this regard draft something, share it with your adversary, supply it. I prefer not to get it during the charge conference, but sometimes that happens, but I understand and I'll hear you out.

Do the other two concerns relate to the charge as well?

MR. BITKOWER: Yes, Your Honor.

THE COURT: Briefly, what are they.

MR. BITKOWER: Number one, there was obviously substantial testimony from the defendant's sister about events that took place after the defendant was arrested out of his presence not of his knowledge. We don't believe that has any relevance to the resolution of the case and ask that the jury be instructed not to consider that unless there's a relevant basis.

THE COURT: I'll consider very carefully any charge you propose but that sounds like something I'll just leave to argument.

MR. BITKOWER: And finally, Your Honor, the defense elicited from the case agent some information about his view of a specific sentence the defendant faces on these charges today. Obviously, our proposed charge and the standard charge would include an instruction that sentence something not in the province of the jury. We would also ask that that question and answer be struck from the record.

THE COURT: Do you want to be heard?

MR. DINNERSTEIN: Your Honor, I think it's a proper question under the circumstances and don't think it's appropriate to strike that question and answer at this time.

THE COURT: All right. Denied.

Anything else before we adjourn for the day? Remember, 9:00 o'clock for the charge conference.

ALL: Thank you.

THE COURT: Good night.

Oh, can I see Counsel at side-bar briefly.

(Side-bar conference held on the record out of the hearing of the jury.)

(Continued on following page.)

(Side-bar.)

THE COURT: I have the same concerns about the current Juror Number Ten as I did with respect to her predecessor?

MR. BITKOWER: It's the seat, Your Honor.

THE COURT: It's like a narcoleptic seat or something. She can't stay awake.

MS. CARVLIN: I noticed that also.

MS. BERGER: Yes.

MR. GOTTLIEB: It's actually been right from the beginning.

THE COURT: Right. So, I'm in the same situation. I'm not going to do anything sua sponte, at least not now, but think about it, talk about it. She's been sleeping a lot, to the point where some of the other jurors were chuckling over it.

So, we'll revisit this in the morning.

(Side-bar end.)

(Continued on following page.)

(In open court.)

THE COURT: Good night.

(WHEREUPON, the proceedings were adjourned to April 26th, 2012, at 9:00 a.m.)

* * *

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